

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

In the Matter of

NEW BEDFORD SCHOOL COMMITTEE

and

NEW BEDFORD SUPPORT SPECIALISTS
UNION/MTA/NEA

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Case No. WMAM-19-7700

Date Issued: June 26, 2020

CERB Members Participating:

Marjorie F. Wittner, Chair
Katherine G. Lev, Member (dissenting in part)
Joan Ackerstein, Member

1 DECISION UPON REINVESTIGATION OF CERTIFICATION

2 Summary

3 The issues before the Commonwealth Employment Relations Board (CERB) are
4 whether the positions of Wraparound Coordinators and Culinary Assistant are
5 appropriately included in a certified bargaining unit of "Support Specialists." Based on the
6 information set forth below, the CERB concludes that both positions are appropriately
7 included in the unit.

8 Statement of the Case

9 On November 18, 2019, the New Bedford School Specialists Union/MTA/NEA
10 (Union) filed a Written Majority Authorization (WMA) Petition with the Department of Labor
11 Relations (DLR) seeking to represent a bargaining unit of "Support Specialists" at the New

1 Bedford Public Schools (District). The proposed unit included the positions of
2 “behaviorists, speech language pathologist assistants, certified occupational therapy
3 assistants and wraparound coordinators.” On November 4, 2019, the DLR sent the
4 parties a notice that it had docketed its petition. On December 16, 2019, the Union filed
5 an Amended Petition that modified the unit description by adding the positions of
6 Behavioral Assistants, Behavioral Specialists and Student Mentors and omitting a
7 separate “Behaviorist” title.¹

8 On December 19, 2019, the New Bedford School Committee (School Committee)²
9 filed a List of Employees and Titles in Proposed Bargaining Unit (Employee List) and
10 Notice of Challenges. There were fifty-five employees on the Employee List, including
11 nine Wraparound Coordinators. The School Committee challenged the inclusion of the
12 Wraparound Coordinators claiming that they: 1) did not share a community of interest
13 with the other bargaining unit members; and 2) were professional employees within the
14 meaning of M.G.L.c.150E, Section 1.

15 On December 20, 2019, the Union submitted a petition to the DLR stating that the
16 “undersigned Speech Language Pathologist Assistants, Wraparound Coordinators and
17 Certified Occupational Therapy Assistants employed by the New Bedford Public Schools”
18 were joining together to designate the Union as their collective bargaining representative

¹ The list of employees that the Employer provided referred to these titles as “Behavioral Assistant,” but the parties refer to the titles “Behavioral Assistant” and “Behaviorist” interchangeably. We use the terms interchangeably.

² The Union’s petition and the certification refer to the employer as the New Bedford Public Schools. Pursuant to M.G.L. c. 150E, §1, the statutory employer is the New Bedford School Committee. The CERB has amended the certification accordingly.

1 and agreed to be included in a bargaining unit consisting of both professional and non-
2 professional employees. The petition was individually signed and dated³ by a majority of
3 the employees in those titles who were listed on the Employee List, including a majority
4 of the Wraparound Coordinators.

5 On December 23, 2019, the Union filed a response to the challenges contending
6 that the Wraparound Coordinators were appropriately included in the petitioned-for unit.
7 The Union also challenged the omission of Jamie Caldas (Caldas) from the School
8 Committee's list. The Union contended that although Caldas has the title of "Culinary
9 Assistant" at the Whaling City Jr./Sr. High School, she performs almost all of the duties
10 performed by Student Mentors in other locations and should thus be included in the unit.

11 Pursuant to 456 CMR 14.19, the DLR, acting as the neutral, conducted a
12 verification by a confidential inspection of the written majority evidence. On December
13 30, 2019, the DLR sent the parties a Confidential inspections Report (Report). The Report
14 set forth the total number of employees in the petitioned-for unit, the total number of
15 written majority authorizations submitted, and the total number of challenged written
16 majority authorizations. In a footnote, the Report indicated that the DLR had not resolved
17 the challenges to the Wraparound Coordinators and Caldas because the challenges were
18 not outcome determinative.

19 Based upon the Report, on December 30, 2019, the DLR certified that the Union
20 had been selected by a majority of employees as their representative in the following
21 bargaining unit:

³ All the signatures were dated "12/16/19."

1 All full time and regular part-time Behavioral Assistants, Behavioral
2 Specialists, Speech Language Pathologist Assistants, Wraparound
3 Coordinators, Student Mentors and Certified Occupational Therapy
4 Assistants employed by the New Bedford Public Schools but excluding all
5 managerial, confidential, casual and other employees.
6

7 On December 31, 2019, the School Committee made a request, pursuant to 456
8 CMR 14.15 and 456 CMR 14.19,⁴ to reinvestigate the certification with respect to the
9 Wraparound Coordinators and Caldas. By letter dated January 8, 2020, the DLR granted
10 the request and indicated that CERB Chair Marjorie Wittner would be reinvestigating the
11 certification. Chair Wittner subsequently requested certain additional information from
12 the parties, which the parties provided in a timely manner. The following facts are based
13 on the information that the parties provided during the reinvestigation.

14 Facts

15 District Bargaining Units

16 There were four bargaining units in the District when the petition was filed:

- 17 • New Bedford Teachers Association – Unit A, comprised of all full-time and part-
18 time professional employees including school nurses with teaching duties.

⁴ 456 CMR 14.15 states:

For good cause shown, the [DLR] may reinvestigate any matter concerning any certification issued by it and, after appropriate hearing, may amend, revise or revoke such certification.

456 CMR 14.19 (15) states:

Within seven days after the [DLR] certifies the bargaining unit, the employer may seek review of any previous challenges the neutral had dismissed as non-outcome determinative. The employer may obtain such review by filing a request to reinvestigate the certification pursuant to the procedure outlined in 456 CMR 14.15.

- 1 • New Bedford Teachers Association – Unit B, comprised of Assistant Principals,
2 Directors, Instructional Leaders (subject area), Coordinators, Supervisors and
3 Supervisor of Nurses.
4
- 5 • New Bedford Federation of Paraprofessionals, Local 2378, AFT, AFT
6 Massachusetts (AFL-CIO), comprised of all instructional and non-instructional
7 paraprofessionals.
8
- 9 • AFSCME, Council 93, AFL-CIO, Local 641, comprised of all civil service District
10 employees.

11 **Wraparound Coordinators**

12 The School Committee first created the Wraparound Coordinator position in 2015,
13 when the Massachusetts Department of Elementary and Secondary Education (DESE)
14 designated the District as an “underperforming or chronically underperforming District.”
15 This designation required the District to create a turnaround plan. Part of the District’s
16 turnaround plan required it to determine gaps in its services and make changes to improve
17 students’ educational results. The Wraparound Coordinator position was created to
18 provide such “wraparound” services to students. A mix of staff performed wraparound
19 services before these positions were created, including assistant principals and
20 principals, school adjustment counselors and guidance counselors.

21 As of January 2020, the School Committee employed eight Wraparound
22 Coordinators.⁵ Six of the eight were hired in 2018 and 2019.

23 Job Duties

24 All Wraparound Coordinators perform essentially the same duties. Wraparound
25 Coordinators connect students and their families with the necessary tools, resources and

⁵ This is one less than appeared on the list of employees that the School Committee provided in December 2019.

1 services they need to address non-academic barriers that may impact students' academic
2 achievement. Wraparound Coordinators spend between 80 and 85% of their time
3 performing student/family specific functions, as described below.

4 Student/Family Specific Services

5 Wraparound Coordinators see students on both an as-needed and long-term
6 basis, with some Wraparound Coordinators having permanent caseloads of up to twenty-
7 five students. According to a District brochure, teachers and other school staff may refer
8 students to Wraparound Coordinators based on risk factors such as the child's behavior;
9 poor attendance; concerns over a student's or his or her family's physical or mental
10 health; emotional, social or developmental concerns, homelessness/poverty,
11 immigration, Department of Children and Family-involved, education interruption, and
12 trauma (abuse/neglect).

13 Wraparound Coordinators first meet with students and families to identify their
14 specific needs.⁶ Then, after consulting with a team comprised of other school employees,
15 including the student's principal, teachers, adjustment counselors, and, at times, special
16 education and clinical facilitators, Wraparound Coordinators draft a Wraparound Plan.
17 The District provides a form for this purpose that seeks specific information about the
18 student and his or her family, including their living situation; health or other concerns; the
19 reason for the referral, and what support systems, if any, are already in place. The form
20 also include space for student assessments, and what resources are needed, requested
21 and/or provided. Once created, Wraparound Coordinators are responsible for doing all

⁶ Many, but not all of the students that Wraparound Coordinators are on Individual Education Plans (IEP) or 504 plans.

1 necessary follow-up to ensure that the Wraparound Plan meets the student's needs and
2 is effective. The follow-up may consist of additional calls to referral sources, meetings
3 with students and their families to help them access or navigate services, attending
4 various school meetings described below, and monitoring and documenting student
5 progress.⁷ Wraparound Coordinators may also modify the Wraparound Plan based on
6 information obtained about the students' behavior, attendance and grades from their own
7 personal observations as well as from teachers and other sources, including Building-
8 Based Support meetings, where teachers and other staff such as guidance counselors
9 and adjustment counselors discuss what services/resources the student is getting or may
10 need to address the non-academic barriers to academic achievement.

11 When Wraparound Coordinators are not meeting directly with students or their
12 families, they spend their time connecting students and their families to community
13 services and supports, such as supports for safe housing, food, welfare benefits, referrals
14 for mental and physical health issues, after school and summer activities, employment,
15 and following up with outside providers and referral sources as needed and if requested.
16 If a student already has non-District supports, the Wraparound Coordinator is responsible
17 for coordinating all the services the student receives.

⁷ According to a brochure that the District provided, the monitoring and support lasts for at least one calendar year until there is a grade transition or exit from the plan.

1 At times, teachers and other staff have reached out to Wraparound Coordinators
2 to address behavior issues from, or to mediate disputes between students the
3 Wraparound Coordinators are seeing.⁸

4 District-Wide Activities

5 Wraparound Coordinators spend about 20-25% of their time doing what are
6 referred to as “District-wide” activities, i.e., activities not focused specifically on a student,
7 but on District families and community members generally. These are the types of duties
8 listed in the “Community Engagement” and “Climate and Culture Building” subsections of
9 the job description. Those duties might include working with outside agencies and
10 community partners to develop programs and funding that can be applied to all students
11 at the schools, and creating and/or managing family and community engagement
12 opportunities at school and community venues. According to the job description,
13 Wraparound Coordinators may train, guide and support building District-wide capacity to
14 provide de-escalation and crisis intervention services. Wraparound Coordinators have
15 also taught Family Education workshops in the evenings.

16 Miscellaneous Non-Student/Family Specific Duties

⁸ The Union contends that, like Behaviorists, Adjustment Counselors and School psychologists, Wraparound Coordinators are tasked with addressing and de-escalating student behaviors and counseling students. The School Committee disputes this, contending that Wraparound Coordinators do not possess the clinical training required to engage in these tasks. However, the Union provided affidavits from Wraparound Coordinators indicating that they occasionally address behavioral issues, either at the request of the teacher, or as part of the Wraparound Plan, as part of their ongoing relationship with a student they are monitoring. The investigation record and affidavits also reflect that Wraparound Coordinators also counsel students, not in a clinical sense, but by advising and checking in with them on their services they are receiving and referrals.

1 The District has assigned Wraparound Coordinators other miscellaneous duties.
2 For example, at least three Wraparound Coordinators work at the Family Welcome Center
3 at the Central Administration building for four hours either on a weekly or biweekly basis.
4 During this time, they meet with students and families who have experienced significant
5 trauma to determine what services they need and to direct them to those services.

6 Another Wraparound Coordinator runs the “tardy table” at the Keith Middle School,
7 where she creates tardy slips for students. The same individual also runs a student
8 support group called “Peer Leaders” that meets once a week. Another is assigned to
9 lunch duty, where she monitors students’ behavior during lunch.

10 Other Wraparound Coordinators are part of the school’s Positive Behavior
11 Interventions and Supports (PBIS) team, which along with a school’s Behaviorists and
12 Student Mentors, teachers and other staff at the school, helps to plan, train, implement
13 and evaluate positive behavior interventions and supports throughout the school.

14 Supervision

15 The Wraparound Coordinators are not part of any other District departments. They
16 report to Wraparound Manager Jariel Vergne (Vergne). Vergne holds monthly meetings
17 with the Wraparound Coordinators but does not supervise them on a daily basis.
18 According to Vergne, the Wraparound Coordinators exercise discretion and independent
19 judgment in performing their duties and, thus, he only provides general supervision, not
20 specific direction.

21 Vergne conducts their annual performance evaluation, which is ordinarily done in
22 person. Only Vergne and the Wraparound Coordinator are present at the evaluation. The
23 process includes one mid-year check-in and a final written evaluation at the end of the

1 school year. The evaluation is based on Vergne’s personal observations, with input from
2 the Building Principal⁹ Evaluation criteria include overall job performance, and
3 performance in relation to goals that are set during the summer. Vergne uses a standard
4 District Evaluation Form, which assesses the employee on a four-point scale (Exemplary,
5 Proficient, Needs Improvement and Does Not Meet) in general categories like
6 Competencies, Job Initiative and Professionalism, Communication Effectiveness, and
7 Quality Customer Service.

8 Meetings

9 Wraparound Coordinators attend a variety of meetings with other staff members
10 including the Building-Based Support Team Meetings referenced above.¹⁰ As referenced
11 above, they may also serve on a school’s PBIS team.

⁹ The Union asserts that the Building Principal supervises the Wraparound Coordinators on a daily basis. The School Committee denies this. We need not resolve this dispute because we find that the Wraparound Coordinators share a community of interest with the other Support Specialists even if they do not share common supervision with other bargaining unit members.

¹⁰ An affidavit provided by Melissa Aviles (Aviles), who is a Wraparound Coordinator at the Whaling City Jr./Sr. High School, indicates that she facilitates Building Based Support team meetings twice a week. Vergne does not dispute that Aviles and other Wraparound Coordinators attend these meetings but claims that Wraparound Coordinators are not authorized to lead such meetings. Given that the meetings, as described in Vergne’s affidavit, are meetings where “teachers who have daily contact with students that have nonacademic needs...meet to discuss with the Wraparound Coordinator, outside resources that may be available to the family and student,” it is plausible that the Wraparound Coordinator, whose job it is to connect students and families with these outside resources, would take the lead during this meeting. Nevertheless, for purposes of this decision, where there is no dispute that Wraparound Coordinators are invited to attend these meetings and regularly do so, there is no need to make a finding as to who actually leads them.

1 Wraparound Coordinators occasionally attend Individual Education Plan (IEP) or
2 504 meetings when invited by school staff or when their presence is requested by a
3 student or parent. Wraparound Coordinators do not serve on a student's Special
4 Education team, nor, unlike the rest of the other bargaining unit members who also attend
5 these meetings, are they responsible for implementing any part of a student's IEP or 504
6 plan.¹¹

7 Schedule/Work Location

8 The Wraparound Coordinators work a twelve-month schedule. Each of the eight
9 Wraparound Coordinators is assigned to a different school within the District. During the
10 school year, the Wraparound Coordinators generally work in their school building, where
11 at least three have their own office. During the summer, they work out of the Central
12 Administration building.

13 Wraparound Coordinators generally work 40 hours/week during regular school
14 hours, but are expected to have a flexible schedule that, depending on the Wraparound
15 Coordinator, may include home visits, and working nights and weekends.¹²

16 Requirements

17 The job description contains the following education and experience requirements:

¹¹ Although the School Committee's submissions state that Wraparound Coordinators are not authorized to attend IEP meetings, affidavits from three Wraparound Coordinators reflect that they do so several times during the school year. This assertion is confirmed by a brochure provided by the School Committee discussing the District's Wraparound Services. The brochure indicated that Wraparound monitoring could include attending school meetings, including IEP meetings.

¹² For example, one Wraparound Coordinator averaged 3-5 home visits a month, while another averaged just 1-2, but neither works weekends. Aviles makes home visits from 1-4 times a month and occasionally works weekends.

- 1 • Bachelor's degree required.
- 2 • Master's degree or coursework; specific experience in school leadership;
- 3 administration and program management strongly preferred.
- 4 • Previous exposure to or experience in the K-12 education sector a plus.
- 5 Previous exposure to or experience in adult learning and/or professional
- 6 development projects a plus.
- 7 • Three to five years of supervisory, administrative or leadership experience
- 8 in training, system change, community organizing or development in a non-
- 9 profit, government or business setting strongly preferred.
- 10 • Have the ability to flex schedule to engage in community events outside of
- 11 school hours and on weekends.
- 12 • Previous experience in family engagement that drives student achievement
- 13 strategies.
- 14 • Previous experience in working with at-risk students, school-based support
- 15 systems, social-emotional learning and current methodology and practices
- 16 within school settings.
- 17 • Thorough knowledge of types of methods of engaging parent/community in
- 18 school activities.
- 19 • Demonstrates experience and success in maintain and expanding
- 20 organizational relationships.

21
22

Salary

23 The Wraparound Coordinators earn between \$50,000 and \$52,000 annually. They
24 are not paid on an hourly basis.

Contacts with Bargaining Unit Members and Non-Bargaining Unit Members

26 The Wraparound Coordinators are in daily contact with Student Mentors and
27 Behaviorists regarding student matters. If one of their students is on an IEP or 504 plan,
28 Wraparound Coordinators also interact with the other members of the students' IEP team,
29 including, in addition to the Behaviorists and Students Mentors, the other bargaining unit
30 members described below.

31

Other Bargaining Unit Members

1 Behaviorists¹³

2 As of December 2019, the District employed 30 Behaviorists.¹⁴

3 Job Duties

4 Behaviorists work in the Special Education department with students who: a) have
5 disabilities, b) are considered at risk, and/or c) have been referred to them. According to
6 the job description, the Behavioral Assistant “functions as a professional in the Special
7 Education substantially separate, behavioral-based and inclusion classroom settings
8 within the New Bedford Public School district.” Behavioral Assistants work directly with
9 students on exercises and activities crafted by the Board-Certified Behavioral Analyst
10 (BCBA) as required in a student’s IEP or as part of the Building Based Support Team
11 process. Other services they provide may include “addressing safety needs related to
12 behavior management and support[ing] the development of social and emotional needs,
13 sensory support, and providing academic support to students.” Behavior Assistants also
14 assist in the “development, implementation and monitoring of behavioral improvement
15 plans that may require the ability to de-escalate behavior, deliver reinforcement and
16 consequences, collect data, and physical management.” Further, they “support and plan
17 coordination of Extended Year Services (EYS) for all students who receive programmatic
18 or related services during the summer.” Behavior Assistants review students’ IEPs with

¹³ This information is based in part on the Behavioral Assistant job description that the District provided. The parties did not provide a Behavioral Specialist job description.

¹⁴ The Union asserts that behaviorists who work at the Whaling City Jr./Sr High School are referred to as Student Mentors. This number does not include those Student Mentors.

1 teachers on a regular basis. When students are in crisis, they are expected to utilize de-
2 escalation techniques taught by the District to minimize the need for physical intervention.

3 Behavioral Assistants spend most of their workday working individually with
4 students, including attending academic classes with students to monitor their behavior
5 and taking students out of class for one-on-one time.

6 Supervision

7 Behavior Assistants work within the Special Education Department. They report
8 to the Building Principal and Sandra Ford (Ford), the Supervisor of Special Education.
9 They are evaluated by the Building Principal or Lead Behaviorist with input from the
10 BCBA, Classroom Teacher, School Adjustment Counselor and School Psychologist.

11 Meetings

12 Behaviorist attend Building Support Team Meetings, IEP and 504 meetings.

13 Schedule/Work Location

14 Behaviorists hired before July 1, 2019 were appointed as twelve-month employees
15 and were compensated over a twelve-month period, regardless of whether they worked
16 in a summer program. Behaviorists hired after July 1, 2019 were appointed to a 190 day
17 work year, which includes all student days in the school year and are compensated as
18 such.. These Behaviorists are required to work during the summer program unless they
19 are not needed. If they do work during the summer months, they are compensated for
20 the hours they work. The summer program for students operates for four to five weeks
21 and has a shortened school day. Approximately eight Behaviorists worked during the
22 summer of 2019. During the summer of 2018, approximately ten behaviorists worked at

1 a four-week summer program at the Roosevelt Middle School for pre-K through 5th grade
2 students.

3 During the school year, Behaviorists work out of the school building to which they
4 are assigned, during regular school hours, where they are responsible for monitoring
5 student behavior throughout the school.

6 Salary

7 Behaviorists earn an hourly wage of \$27 – \$31/hour or approximately \$37,000 -
8 \$38,000 per year.

9 Requirements

10 The qualifications listed on the job description include:

- 11 • Preferred Bachelor's Degree from an accredited college or university. Evidence
12 of specific professional study in the field of special education, psychology, Applied
13 Behavioral Analysis or social work.
- 14 • High School Diploma or GED, along with highly qualified through Pathways 1,2,3
15 through the Massachusetts Laws.
- 16 • Two-three years' experience in the area of Special Education/Student Services.
17

18 Contacts with other bargaining unit members

19
20 If a Behaviorist is assisting a student who has a special education team, the
21 Behaviorists will have frequent contact with other bargaining unit members who are on
22 that team. Behaviorists will also have contact with other bargaining unit members during
23 IEP or 504 plan meetings and meetings of the Building Based Support team.

24 Student Mentors

25
26 There are approximately five Student Mentors.

27 Job Duties

1 Student Mentors work directly with students placed in an alternative school setting.
2 They support students with social/emotional needs, providing both one-on-one and group
3 supports. The duties listed on the job description include "assisting students to gain
4 academic, social and emotional skills," and "providing supervision and support for in-
5 school suspensions, detentions, School Support Rooms and the Behavior Intervention
6 center. "

7 Supervision

8 Student Mentors are evaluated by the Building Principal.

9 Meetings

10 Student Mentors are part of a student's special education team and attend IEP
11 meetings when required.

12 Schedule/Work Location

13 Students work exclusively in school buildings, during the school year, during
14 school hours. No School Mentors worked during the summer of 2019.

15 Salary

16 Student Mentors earn an average of \$22/hour.

17 Requirements

18 The job requirements in the job description include an Associate's degree in a
19 behavioral science or high school education with at least two years' combination of
20 experience and training working with children, students and families.

21 Speech Language Pathology (SLP)Assistant

22 There are approximately ten SLP Assistants.

23 Job Duties

1 SLP Assistants provide direct services to students with speech and language
2 deficits/disabilities and who are on an IEP or 504 Plan. As stated on the job description,
3 this position is responsible for:

4 [Providing prevention and remediation services for students who exhibit
5 difficulties in the areas of language, speech, voice and fluency. These
6 services are designed to help children meet their educational goals. This
7 position also requires ongoing parent contact and collaboration with
8 general education and/or therapeutic staff.

9
10 Supervision

11 SLP Assistants report to the Building Principal and the Special Education
12 Supervisors, and are evaluated by the SLP Supervisor, who is a licensed Speech and
13 Language Pathologist.

14 Meetings

15 SLP Assistants attend IEP meetings when requested and may be part of a
16 student's special education team.

17 Schedule/Work Location

18 The SLP Assistants earn an hourly wage of \$29 - \$33 an hour. They work a
19 minimum of seven hours a day, exclusively in school buildings. They work during the
20 school year, but, as indicated on the job description, may also participate in summer
21 programming. Three SLP's worked during the summer of 2019.

22 Requirements

23 The qualifications listed on the job description include a minimum of a Bachelor's
24 degree in speech language therapy or a related subject, and licensure as a SLP Assistant.

25 Certified Occupational Therapy Assistant (COTA)

26 The District employs two COTAs.

1 Job Duties

2 COTAs work directly with students on exercises and activities that the
3 Occupational Therapists create as required in a student's IEP or 504 plans. The Job Goal
4 in the COTA's job description states:

5 The COTA is responsible for providing Occupational Therapy as prescribed
6 by the Occupational Therapist. The COTA is expected to service students
7 with multiple developmental and physical disabilities. The COTA will
8 provide an OT curriculum to all students who require this service per their
9 IEP. This position also requires ongoing parent contact and collaboration
10 with general education and/or other therapeutic staff.

11
12 Other job duties include gathering data for OT assessments.

13 Supervision

14 COTAs work under the supervision and guidance of a licensed Occupational
15 Therapist. They report to the Building Principal and the Special Education supervisor, who
16 evaluates them.

17 Meetings

18 COTAs attend IEP meetings under the direction of the licensed Occupational
19 Therapist.

20 Schedule/Work Location

21 COTAs work during the school year and participate in summer programming as
22 needed. Both COTAs worked during the summer of 2019.double space this paragraph

23
24 Salary

25
26 COTAs earn \$22 per hour.

27
28 Requirements

29
30 As listed on the job description, the COTAs are required to have an appropriate
31 degree from an approved COTA program and Massachusetts certification as a COTA.

1 They must also have the ability to follow the treatment plan and IEP goals and objectives
2 as developed by a licensed Occupational Therapist.

3 **Culinary Assistant**

4 The District employs one Culinary Assistant, Caldas, who has worked at the
5 Whaling City Jr./Sr High School since September 5, 2019. Caldas originally applied for
6 a job as a Behaviorist but was informed at her interview that the position had been filled.
7 Instead, she was offered the position of Culinary Assistant.

8 Job Duties

9 The District has a Culinary Arts program that includes a restaurant, The Lower
10 Deck, which is located at the Whaling City Jr./Sr. High School. The job duties listed on
11 the job description include:

- 12 • Lead transition of students to and from culinary classroom from main school
- 13 • Maintain student behavior and attendance protocols
- 14 • Assist culinary teacher with instruction and learning
- 15 • Assist culinary teacher with other aspects of student learning.
- 16 • Check paper good supplies in kitchens and storage areas and replenish
- 17 • Check staples and other supplies in kitchens and replenish.

18 Caldas provided an affidavit in which she explained that her daily duties involved
19 bus duty during arrival and dismissal; covering classes for teachers who are absent,
20 transitioning students from the 3rd floor to the basement and back; conducting “pat downs”
21 and searches of the female students for contraband and ensuring the safety of the
22 students when working in the kitchen and restaurant. She assists in de-escalating
23 students with behavioral or social emotional issues or who are in crisis.
24

1 Caldas spend about 90% of her time attending to student behavior issues. The
2 other 10% of her time is spent on making food deliveries to the staff and doing cleanup
3 of the restaurant area when no students are present.

4 Supervision

5 Caldas' daily work is directed by the Culinary teacher. Her position is not part of
6 the Special Education department.

7 Meetings

8 Twice a week after school, Caldas participates in what she calls "Behavior Team"
9 meetings with other Behaviorists and Student Mentors, in which they review student
10 behavior as well as any safety concerns that arise during the week.¹⁵

11 Schedule/Work Location

12 Caldas works eleven months a year during school hours. Most of her work is done
13 in the Lower Deck restaurant. She does not work nights or weekends.

14 Salary

15 The Culinary Assistant earns \$22/hour.¹⁶

16 Requirements

17 The requirements listed on the job description include:

- 18 • Perform other duties as assigned by culinary teacher, principal or designee.
- 19 • High School Diploma or GED
- 20 • One (1) year experience in restaurant, food industry or culinary classroom
- 21 setting preferred

¹⁵ It is unclear whether Caldas is referring to Building Based Team Meetings, or PBIS meetings.

¹⁶ Caldas' offer letter indicated that she would earn \$22/day, but we assume this was a typographical error

1 Opinion¹⁷2 **Wraparound Coordinators**

3 As a preliminary matter, we address the School Committee's argument that the
4 Wraparound Coordinators should not be included in the unit because they are
5 professional employees within the meaning of Section 1 of M.G.L. c. 150E. Section 3 of
6 the Law states in pertinent part that, "No unit shall include both professional and
7 nonprofessional employees unless a majority of such professional employees votes for
8 inclusion in such unit." Here, the Union has provided supplemental evidence of written
9 majority authorization indicating that a majority of the COTAs, SLP Assistants and
10 Wraparound Coordinators, including a majority of the Wraparound Coordinators
11 appearing on the Employee List, wished to be included in a unit with non-professional
12 employees. Having satisfied Section 3's requirements, we decline to exclude the
13 Wraparound Coordinators based on their purported professional status.

14 Community of interest¹⁸.

15 Section 3 of the Law requires the CERB to determine appropriate bargaining units
16 that are consistent with the purpose of providing for stable and continuing labor relations
17 while giving due regard to the following considerations: 1) community of interest; 2)
18 efficiency of operations and effective dealings; and 3) safeguarding the rights of
19 employees to effective representation. City of Everett, 27 MLC 147, MCR-4824 (May 23,
20 2001). To determine whether employees share a community of interest, the CERB

¹⁷ The CERB's jurisdiction is not contested.

¹⁸ As set forth separately below, Member Lev dissents from this portion of the decision.

1 considers such factors as similarity of skills and functions, similarity of pay and
2 working conditions, common supervision, work contact, and similarity of training and
3 experience. Boston School Committee, 12 MLC 1175, 1196, CAS-2598 (August 30,
4 1985) (citations omitted). The CERB traditionally favors broad, comprehensive units
5 over small, fragmented units. Town of Berkley, 35 MLC 266, 267, MCR-09-5361 (May
6 7, 2009). No single factor is outcome determinative. Town of Ludlow, 27 MLC 34, 36,
7 CAS-3435 (October 17, 2000).

8 The School Committee contends that the Wraparound Coordinators do not share
9 a community of interest with the other bargaining unit members due to differences in their
10 supervision, schedule, level of education, duties, and the level of discretion and judgment
11 they exercise. We disagree.

12 The Law requires that members of a bargaining unit share only a community of
13 interest, not an identity of interest, provided there is no inherent conflict among
14 consolidated groups of employees. Town of Somerset, 25 MLC 98, 100, CAS-3145
15 (January 6, 1999). Minimal differences do not mandate separate bargaining units
16 where employees perform similar job duties under similar working conditions and share
17 common interests amenable to the collective bargaining process. Higher Education
18 Coordinating Council, 23 MLC 194, 197, CAS-3058 (March 7, 1997). Only significant
19 differences that would result in inevitable conflicts constitute a basis for excluding
20 employees from a bargaining unit on the grounds that the employees lack a community
21 of interest with other bargaining unit members. West Boylston Water District, 25 MLC
22 150, 151, MCR-4706 (April 1, 1999) (citing Franklin Institute of Boston, 12 MLC 1091,
23 1093, MCR-3409 (July 18, 1985)).

1 Here, like all other positions in the unit, the Wraparound Coordinators are non-
2 supervisory employees that provide support services to students who have been deemed,
3 for a variety of reasons, to need additional assistance to succeed academically. Although,
4 as the School Committee argues, the Wraparound Coordinators do not fall under the
5 Special Education Department or work directly with students by implementing IEP or 504
6 plans, the Wraparound Coordinators do meet with students on a regular basis as part of
7 their duties in creating and monitoring Wraparound Plans. Moreover, even if the
8 Wraparound Coordinators do not directly implement IEP or 504 plans, they have frequent
9 contact with the other bargaining unit members who do, because they regularly attend
10 Building-Based Support meetings with members of a students' team. They also
11 occasionally attend IEP meetings when invited.

12 Furthermore, because Wraparound Coordinators' duties focus on addressing the
13 non-academic issues that could be impeding students' academic success, their duties
14 both enhance and complement the efforts of the other Support Specialists. For example,
15 while COTAs and SLP Assistants work directly with students who have disabilities, the
16 Wraparound Coordinators' duties complement these tasks by working with the families
17 and students to connect them to other disability-related resources. Similarly, while
18 Behaviorists and Student Mentors work directly with students with behavioral or other
19 social/emotional issues, the Wraparound Coordinators perform complementary duties by
20 addressing the factors in the students' lives that may be causing or contributing to these
21 issues.

22 Indeed, Wraparound Coordinators address behavior issues even more directly, by
23 occasionally intervening when a behavior issue arises when requested by a teacher or as

1 part of a Wraparound plan. In addition, many of the Wraparound Coordinators'
2 miscellaneous duties have a behavioral component, like lunch and "tardy table" duty.
3 Furthermore, some Wraparound Coordinators are part of the school's PBIS team, where
4 Behaviorists, Students Mentors, teachers and other school staff help to plan, train,
5 implement and evaluate positive behavioral interventions and supports throughout the
6 school. The Wraparound Coordinator job description likewise indicates that they are
7 expected to provide guidance and training on how to provide de-escalation and crisis
8 intervention services. Accordingly, while there may be differences in the types of duties
9 performed by Wraparound Coordinators and other bargaining unit members, they are not
10 significant enough to create inherent conflicts in the unit. To the contrary, their duties are
11 similar and complementary to the other Support Specialists in the unit.

12 None of the other differences in Wraparound Coordinators' terms and conditions
13 of employment or requirements persuade that they do not share a community of interest
14 with the other Support Specialists. Their daily work schedule and work location is
15 generally the same as that of other bargaining unit members, with some exceptions for
16 weekend work and home visits. The variations are neither significant nor consistent
17 enough to warrant removing collective bargaining rights. The same holds true for the fact
18 that Wraparound Coordinators work summers, particularly where there is evidence that
19 all bargaining unit members except the Student Mentors perform some type of summer
20 work. In any event, the CERB has previously deemed units consisting of both school year
21 and full-tyear school employees appropriate. See, e.g., Monson School Committee, 30
22 MLC 111, MCR-03-5051 (January 28, 2004) (including full-year mechanic in unit of
23 school-year van drivers, bus drivers and bus monitors did not destroy community of

1 interest where there were other similarities in terms and conditions of employment);
2 Waltham School Committee, 25 MLC 137, CAS-3220, MCR-4541 (March 1, 1999)
3 (approving petition for a bargaining unit comprised of both twelve-month and ten-month
4 school secretaries).

5 Their education requirements are not significantly different either. While
6 Wraparound Coordinators are required to have a Bachelor's degree with a Master's
7 preferred, the SLP Assistants and COTAs also require either a Bachelor's or Associate's
8 degree and certification in their specialty. Thus, the unit is comprised of several positions
9 that require higher education degrees.¹⁹

10 The fact that Wraparound Coordinators are the only Support Specialists who do
11 not work in the Special Education Department does not affect this outcome because the
12 CERB has held that bargaining units limited to departments or other administrative units
13 of a large employer are inappropriately underinclusive if there exists a community
14 of interest among a larger group of employees sufficient to create a broad,
15 comprehensive bargaining unit. Town of Newbury, 14 MLC 1660, 1662, MCR-3669
16 (April 8,1988).²⁰ Moreover, given that employees in different departments are likely to
17 report to different supervisors, the mere fact that Wraparound Coordinators report to
18 Vergne, instead of the Specialist Education Supervisor, does not change this result
19 either, particular where the Wraparound Coordinators regularly interact with other

¹⁹ Thus, our dissenting colleague's assertion that the Wraparound Coordinators are the only bargaining unit positions that require a Bachelor's degree is inaccurate.

²⁰ Although our dissenting colleague relies partially on the fact that Wraparound Coordinators do not work in the Special Education department, neither does the Culinary Assistant, as to whom she does not dissent.

1 bargaining unit members regarding the students to whom they provide support.. See
2 Lawrence School Committee, 29 MLC 213, MCR-02-5009, MCR-02-5010 (May 16, 2003)
3 (lack of common supervision did not destroy community of interest where the incumbent
4 in in the disputed title worked at the same site as most of the other bargaining unit
5 personnel and interacted with most of them). In any event, like the Wraparound
6 Coordinator, the SLP Assistant is evaluated by someone other than the Special Education
7 Supervisor, and, like all other bargaining unit members, the Building Principal plays some
8 role in either supervising or evaluating the Wraparound Coordinators.

9 The School Committee also emphasizes that the Wraparound Coordinators
10 exercise significantly more discretion and judgment than other Support Specialists, by
11 determining what services are needed, identifying available services in the community
12 and guiding families on how to access those services. The record reflects, however, that
13 when crafting the Wraparound Plan and conducting follow-up, the Wraparound
14 Coordinators meet and consult with teachers, guidance counselors and adjustment
15 counselors. Even assuming that Wraparound Coordinators exercise a greater degree of
16 discretion and judgment than the other Support Specialists, this again does not warrant
17 excluding them from the certified unit, where there is no evidence that this factor or any
18 of the other differences cited above are likely to create inherent conflicts of interest.²¹ To

²¹ Our dissenting colleague's claim to the contrary is not supported by the record or caselaw. We note in particular that the CERB, on at least two occasions, has determined that a position shared a sufficient community of interest with a bargaining unit despite noting multiple, significant differences between that position and the majority of other members of the unit. See Brockton School Committee, 26 MLC 191, 194, MCR-4740, CAS-3393 (April 6, 2000) (directing an election in a unit of teachers, non-teaching professionals and school nurses, despite fact that nurses were subject to different

1 the contrary, the record shows that the Wraparound Coordinators share similar working
2 conditions, common goals and interests, and interact regularly with other bargaining unit
3 members over the students in their care. Further, including the Wraparound Coordinators
4 in a unit of other Support Specialists would be consistent with the CERB's longstanding
5 policy of favoring broad, comprehensive units over small, fragmented ones. Town of
6 Berkley, supra. For these reasons, we decline to amend the certification with respect to
7 this title.

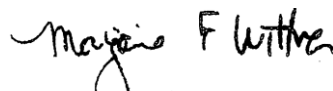
8 **Culinary Assistant**

9 The Union contends that the Culinary Assistant should be in the unit because she
10 performs almost all of the same duties as Student Mentors. The School Committee
11 disagrees, asserting that the Union provides no evidence that the Culinary Assistant is a
12 Student Mentor and the title of Culinary Assistant is not listed in the certified unit. The
13 record reflects, however, that the Culinary Assistant spends at least 90% of her time
14 addressing student behavior issues. We therefore agree with the Union that her job duties

evaluation, retirement system, and had different primary functions and Civil Service status, where nurses shared other terms and conditions of employment with teachers such as education and licensure, biweekly paychecks, days off, school vacation and work hours); Hanover School Committee, 24 MLC 84, CAS-3177, March 23, 1998) (accreting nurses to a unit comprised of teachers and other professional despite "significant" differences between the nurses and the teachers, including separate supervisors, a different evaluation procedure, different job qualifications, and a different primary function, where the CERB otherwise found that the nurses shared similarities with non-teaching bargaining unit members, and with the teachers, including, notably, by interacting with teachers at IEP meetings as part of a "holistic" approach to education, and by having similar schedules and benefits). Here, for the reasons stated in the body of the decision, we do not believe the differences in the Wraparound Coordinators' duties or terms and conditions of employment from the other Support Specialists are as significant as painted by the Town or the dissent, particularly where there is no evidence that these differences are likely to lead to inherent conflict within the unit.

1 are similar to those performed by Student Mentors and Behaviorists. Furthermore, the
2 Culinary Assistant works in the high school during the school day, receives the same
3 hourly pay as Student Mentors and COTAs, and attend meetings with Behaviorists and
4 Students Mentors to discuss student behavior issues. Consequently, we find that this title
5 shares a community of interest with the other Support Specialists.

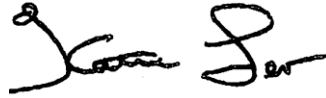
6 The School Committee offers no basis for excluding the Culinary Specialist from
7 the unit other than the fact that this is not a title in the certified unit. However, the CERB
8 does not determine unit placement based solely on job titles. Town of Agawam, 13 MLC
9 1364, 1369MCR-3511 (December 24, 1986). Moreover, consistent with the policy of
10 creating broad units, the CERB has previously amended certifications on grounds that
11 they were inappropriately underinclusive. Town of Burlington and Thomas Short, 5 MLC
12 1234, CAS-2120 (June 27, 1978). Where the Union timely challenged the exclusion of
13 Caldas from the Employee List, and where the position otherwise shares a community of
14 interest with the rest of the Support Specialists, the certification issued on December 30,
15 2019 should be amended to include the title of Culinary Assistant.
16 SO ORDERED.

17 

18 _____
19 MARJORIE F. WITTNER, CHAIR
20

21 

22 _____
23 JOAN ACKERSTEIN, CERB MEMBER
24



KATHERINE G. LEV (with respect to ruling on
Culinary Assistant only)

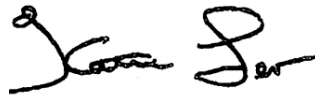
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7 Member Lev, Dissenting as to Wraparound Coordinators:

8 I am not persuaded the Wraparound Coordinators share a community of interest
9 with the other bargaining unit members due to differences in their duties, supervision,
10 schedule, level of education, and level of discretion and judgment exercised. I believe
11 the differences between the Wraparound Coordinators and the other bargaining unit
12 members would result in inevitable conflicts and constitute a basis for excluding them
13 from the bargaining unit.

14 The other positions in the unit fall under the Special Education Department and
15 work directly with students while the Wraparound Coordinators' duties are directed at
16 addressing non-academic issues. As the cases cited by the majority point out, some of
17 the differences in Wraparound Coordinators' terms and conditions of employment or
18 requirements, on their own, would not be enough to destroy community of interest where
19 there were other similarities in terms and conditions of employment. Here, the differences
20 far outweigh and outnumber the similarities. In addition to the coordinators falling under
21 a different department, there are significant differences in pay structure (hourly vs. salary),
22 education (BA required vs. preferred), supervisor and reporting structure, daily schedules
23 (flexible with weekend and evening work vs. scheduled), annual schedules (summer work
24 vs. school year only) and level of discretion and judgment exercised.

1 Several of the cases cited by the majority stand for examples of why one particular
2 difference does not destroy the community of interest. None of the cases support a set of
3 facts, such as presented in the instant case, where a significant number of the criteria
4 that would generally support the community of interest can be clearly distinguished from
5 the other bargaining unit members. For the reasons stated above, I do not agree that
6 Wraparound Coordinators are appropriate for inclusion in the certified unit.



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KATHERINE G. LEV, CERB Member