

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

In the Matter of

LOWER PIONEER VALLEY
EDUCATIONAL COLLABORATIVE

and

LOWER PIONEER VALLEY
EDUCATIONAL COLLABORATIVE
EDUCATORS UNION

Case No. WMAM-23-10111

Date Issued: April 17, 2024

CERB Members Participating

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

Appearances:

Jonathan M. Conti, Esq. - Representing Lower Pioneer Valley Educational
Collaborative Educators Union

Sarah C. Spatafore, Esq. - Representing Lower Pioneer Valley Educational
Collaborative

1 CERB DECISION UPON REINVESTIGATION OF CERTIFICATION

2 Summary

3 The issue before the Commonwealth Employment Relations Board (CERB) is
4 whether an administrative assistant to the Principal/Director of the Lower Pioneer Valley
5 Career and Technical Education Center (Career TEC) is appropriately included in a
6 certified bargaining unit of non-professional employees employed by the Lower Pioneer
7 Valley Educational Collaborative (LPVEC or Employer). For the reasons stated below,

1 the CERB finds that this administrative assistant is not a confidential employee within the
2 meaning of Section 1 of M.G.L. c. 150E (the Law) and should remain in the certified unit.

3 Statement of the Case

4 On June 27, 2023, the Lower Pioneer Valley Educational Collaborative Educators
5 Union (Union) filed a Petition for Certification by Written Majority Authorization (WMA)
6 with the Department of Labor Relations (DLR) seeking to represent a bargaining unit of
7 employees employed by LPVEC. The petitioned-for unit included the positions of
8 “classroom assistant, technical assistant, individual aide, administrative assistant, and all
9 clerical staff.” On July 10, 2023, the DLR sent the parties a notice that it had docketed the
10 petition. Pursuant to 456 CMR 14.19(6), the DLR was designated as the Neutral, effective
11 July 20, 2023.¹

12 The Union’s petition listed the total number of employees in the unit as 34. On
13 August 2, 2023, the Employer filed its final employee list, which included 31 names, along
14 with challenges to two of the employees on its list. The Union challenged the Employer’s
15 exclusion of three employees from the Employer’s list.

16 The DLR Neutral subsequently conducted a confidential inspection of the evidence
17 of written majority authorization from the Union. On August 7, 2023, the Neutral issued a
18 Confidential Inspection Results Report (Report), which indicated the following totals: 34
19 employees in the bargaining unit, 26 valid written majority authorizations,² and five

¹ As the DLR noted in the docketing notice, the Union made certain technical corrections to the unit description after filing the petition, which were reflected in the notice. The corrections did not concern the enumerated positions the Union sought to include.

² The Neutral determined that eight of the written majority authorizations the Union submitted with the petition were invalid, as the parties agreed that the employees who submitted the authorizations were not included on the employee list.

1 challenged written majority authorizations. The Neutral determined that the Union had
2 obtained authorizations from the majority of the employees in the bargaining unit.
3 Because the number of challenges was “insufficient to potentially affect the result,” the
4 Neutral dismissed them without resolving them. See 456 CMR 14.19(10).

5 Based upon the Report, on August 7, 2023, the DLR certified that the Union had
6 been selected by a majority of employees as their representative in the following
7 bargaining unit:

8 All full-time and regular part-time non-professional employees employed by
9 the Lower Pioneer Valley Educational Collaborative in the positions of
10 classroom assistant, technical assistant, individual aide, administrative
11 assistant, and all clerical staff, but excluding all managerial, confidential,
12 casual, and all other employees.

13 On August 21, 2023, pursuant to 456 CMR 14.15 and 456 CMR 14.19(15), both
14 the Union and the Employer filed Motions for Reinvestigation of the Certification of Written
15 Majority Authorization.³ The motions requested reinvestigation solely with respect to a
16 single administrative assistant position held by Stacy Wieners (Wieners). The parties
17 dispute whether Wieners is a confidential employee within the meaning of Section 1 of

³ 456 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 the Law. The Employer filed a response to the Union's request for reconsideration and
2 the Union filed a reply to the Employer's response. The Union's submissions included
3 affidavits from Wieners and Union president Kenneth Strout (Strout). The Employer's
4 submissions included an affidavit from Donald Jarvis (Jarvis), the Principal/Director of the
5 Lower Pioneer Valley Career and Technical Education Center, and a job description for
6 the title, Occupational Education-Confidential Administrative Assistant, which it claims is
7 the current job description for Wieners' position.

8 By letter dated January 11, 2024, CERB Chair Marjorie Wittner notified the parties
9 that the CERB had granted the motions to reinvestigate the certification, and that she
10 would be conducting the reinvestigation on behalf of the CERB. In her letter, Chair Wittner
11 requested certain additional information from the parties, and requested that all facts
12 should be either supported by documentary evidence or affidavits from individuals with
13 first-hand knowledge of the facts. Both parties responded to the request and provided
14 supporting documentation. The Union submitted supplemental affidavits from Wieners
15 and Strout. The Employer submitted four additional job descriptions but no additional
16 affidavits.⁴

17 Findings of Fact⁵

⁴ The Employer attached two job descriptions, one undated and one from 2008 for the position titled "Confidential Secretary Occupational Education; one job description for the "Secretary of Occupational Education;" and one job description for the Director of Human Resources.

⁵ The following facts are derived from the affidavits, documents, and other information contained in the parties' initial motions for reinvestigation and responses thereto, as well as the information that the parties provided in response to the January 11, 2024 letter. Except as described in footnote 11, these facts are not disputed.

1 Wieners is employed as Jarvis' administrative assistant. CareerTEC is located in
2 the same building as the LPVEC offices. Wieners began working in this position on or
3 around January 1, 2023, approximately six months before the Union filed the WMA
4 petition.

5 Duties

6 Based on Wieners' three affidavits, she performs the following duties:

- 7 1) General office work, including answering the phones, filing, and working with
8 secretaries to handle paperwork.
- 9
10 2) Maintaining the school van calendar.
- 11
12 3) Helping coordinate the admissions process, making purchases and payments
13 for classroom and shop orders and for the LPVEC building, coordinating grant-
14 funded purchases, professional development, and training staff as needed with
15 respect to budgets and purchasing procedures.⁶
- 16
17 4) Coordinating the transition to online forms for admissions and annual releases
18 and for filing all reports mandated by the Commonwealth of Massachusetts
19 Department of Secondary and Elementary Education (DESE).
- 20
21 5) Inputting teacher evaluation ratings and educator plans into the EPIMS
22 program.
- 23
24 6) Working with teachers to ensure that report cards, progress reports, and
25 warning reports are filed and sent out in a timely manner.
- 26
27 7) Ensuring that educators' entries into the school's MUNIS software system for
28 sick days, personal days, bereavement leave, or other accrued time,
29 correspond to the educators' hard copy timesheets, and flagging any
30 discrepancies.
- 31

⁶ Before Wieners was hired, another employee was responsible for duties related to purchasing, reimbursement, and professional development paperwork. That person left the position in June 2022 and the Employer has no plans to fill the vacancy. Although the parties dispute who performed previously performed the duties, they do not dispute that these duties were assigned to Wieners after she began her employment.

1 8) Scheduling bi-monthly Principal Council meetings by creating an invite in
2 Google calendar and inviting other attendees to the scheduled meeting, and on
3 occasion attending Principal Council meetings to take minutes.⁷
4

5 Wieners has been performing these duties since the beginning of her employment, and
6 there is no evidence that the Employer has ever told her that she would receive additional
7 duties in the future.

8 Job Descriptions⁸

9 As noted above, the Employer provided three job descriptions for Wieners'
10 position: a job description titled "Occupational Education – Confidential Administrative
11 Assistant," which the Employer asserts is the current job description for Wieners' position;
12 and two job descriptions titled "Confidential Secretary – Occupational Education," which,
13 based on their dates, appear to be job descriptions for Wieners' predecessors. It also
14 provided a job description titled "Secretary of Occupational Education," which appears to
15 be a current description for another Career TEC administrative assistant position.

16 All three job descriptions include references to confidential duties and
17 qualifications. In addition to the use of the term "confidential" in the job title, the job
18 descriptions state that the incumbent is required to "maintain confidentiality of records
19 and information gained as part of exercising professional duties about students, their

⁷ The Principal Council and its meetings are described separately below.

⁸ The Union was not aware that any job descriptions existed until the Employer filed them as part of this proceeding. According to Strout, when the Union was first certified as the collective bargaining representative for the unit at issue, "it was determined that there were no existing job descriptions." The Union does not, however, dispute the contents of those descriptions, except their characterization of Wieners' position as confidential. As explained below, our determination of whether the position is a confidential position is based on the position's actual duties, not how it is labeled or described.

1 families” and to have the ability to exercise “sensitivity to confidential documents and
2 privacy related issues.”⁹ Notably, although the job description that the Employer provided
3 for the “Secretary of Occupational Education” does not contain the word “confidential” in
4 its title, it contains the same references to handling “confidential” documents.

5 Office Location

6 Wieners’ workspace is located in the LPVEC main office. There is one other
7 bargaining unit administrative assistant who also works in the main office. Jarvis’ office is
8 located five doors down a long hallway from the main office. Wiener cannot hear Jarvis
9 when he is in his office.¹⁰

10 Access to Accounts

11 Wieners has never had access to Jarvis’ email account.¹¹ She does have access
12 to Jarvis’ daily calendar, as do all of the administrators, including other unit members.
13 Jarvis schedules his own meetings,¹² except for Principal Council meetings, described
14 below.

⁹ As discussed below, Wieners and the Union dispute these duties.

¹⁰ In response to the DLR’s question of whether Wieners could hear Jarvis when Jarvis is in his office, Wieners stated in her affidavit that she could not hear Jarvis when he is in his office. The Employer stated in its response that it was “unlikely but largely unknown” whether Wieners could hear him. Based on these responses and the distance between Wieners’ desk and Jarvis’ office, we find that Wieners has not yet heard Jarvis when he is speaking in his office and that it is unlikely that she ever will.

¹¹ In the Employer’s first two submissions, it stated that Wieners had access to Jarvis’ email account. In its third and final submission, however, it conceded that she does not. Based on the Employer’s final assertion, and Wieners’ affidavits, in which she has consistently maintained that she has never had access to Jarvis’ email account, we find that Wieners has no access to Jarvis’ email account.

¹² The Employer claims that it intends to assign more scheduling duties to Wieners in the future.

1 Principal Council Meetings

2 The Principal Council is a group composed of principals from the nine districts that
3 send students to Career TEC, and the liaisons that represent Career TEC in those
4 districts. The Principal Council meets every other month. The subject matter of the
5 meetings varies, but the agenda tends to cover issues that affect or are of interest to all
6 of the schools, e.g., curriculum, report cards, vaping in school, and education laws. There
7 is no discussion of collective bargaining, labor relations, or personnel issues at Principal
8 Council meetings. Wieners' involvement includes scheduling meetings every other month
9 by creating and circulating a Google Calendar invite.

10 Since beginning her position, Wieners had attended and taken minutes at one
11 Principal Council meeting.

12 Access to Personnel Matters

13 Unit Member Discipline

14 Since starting her position, the Employer has not asked Wieners to draft or send
15 disciplinary letters or to participate in the employee disciplinary process before an
16 employee resigns, is disciplined or is terminated. Wieners is notified several weeks after
17 an employee resigns or is discharged so that she can report the personnel change to
18 DESE.¹³

¹³ The Employer stated in the Motion for Reinvestigation that “[the] position...has been asked to assist with the preparation of disciplinary letters,” however, it added by footnote that “[Wieners] has not been given this responsibility yet as no disciplinary issues arose during her short tenure.” At the time this was written, Wieners had been in the position for approximately eight months. There was no evidence in any further submissions that Wieners has been given this responsibility.

1 Wieners has not had contact with Strout with regard to member discipline. In 2023,
2 Strout represented bargaining unit members in approximately eleven instances of unit
3 member discipline, which included six verbal reprimands, four written reprimands, and
4 one suspension. For instances that required investigatory meetings, Jarvis conducted the
5 investigations with Strout in attendance. Wieners was not present during any of those
6 disciplinary proceedings. All of the communications Strout has received concerning
7 discipline have been communicated to him by the Human Resources Department, and
8 any official disciplinary correspondence was issued directly by the Human Resources
9 Director, Christine Brassile.

10 Teacher Evaluations

11 Wieners is responsible for inputting teacher evaluation data into the State's
12 reporting system, Education Personnel Information Management System (EPIMS) once
13 the evaluations have been completed by administration. There is no evidence in the
14 record that Wieners has any involvement in the evaluation process itself.

15 Collective Bargaining at LPVEC

16 On September 30, 2022, approximately nine months before the Union filed its
17 petition in this case, the Union was certified as the exclusive bargaining representative
18 for a separate unit comprised of all professional employees at LPVEC, including teachers.
19 Between December 5, 2022, and January 2, 2024, the Union and Employer engaged in
20 nineteen collective bargaining sessions. Jarvis attended all but one or two of the sessions,
21 and according to the Employer, Jarvis was "a key member of the bargaining team,
22 participating in all bargaining strategy meetings and assisting with developing, reviewing,
23 and revising proposals and counterproposals." Wieners became Jarvis' assistant one

1 month into the bargaining process. There is no evidence, and the Employer does not
2 claim, that Wieners has been exposed to, or has discussed or viewed any matters related
3 to collective bargaining or labor relations during the course of her employment. She has
4 not been asked to draft or review collective bargaining proposals, and she has not
5 otherwise assisted Jarvis with any tasks related to collective bargaining or labor
6 relations.¹⁴

7 The Executive Director of LPVEC, Alvin Morton (Morton), attended the sessions
8 as the Employer's representative. Morton has a confidential administrative assistant,
9 Phyllis St. John (St. John). There is no evidence, and the Employer does not assert that
10 St. John attended any bargaining sessions.

11 Opinion

12 Section 1 of the Law defines a confidential employee as one who directly assists
13 and acts in a confidential capacity to a person or persons otherwise excluded from
14 coverage under this chapter. The CERB has construed this statutory language to cover
15 those individuals who have a direct and substantial relationship with an excluded
16 employee that creates a legitimate expectation of confidentiality in their routine and
17 recurrent dealings. Framingham Public Schools, 17 MLC 1233, 1236, CAS-2838
18 (September 4, 1990). The CERB has narrowly construed this exception to preclude as
19 few employees as possible from collective bargaining rights, while not unduly hampering
20 the employer's ability to manage its operations. Silver Lake Regional School Committee,
21 1 MLC 1240, 1243, CAS-163 (January 13, 1975). Employees may directly assist

¹⁴ Although the Employer suggested in its initial filings that Wieners had some involvement in collective bargaining preparations, the Employer's response to the DLR's information request states that Wieners has not been involved in bargaining preparations.

1 excluded employees without assisting them in a confidential capacity. Nauset Regional
2 High School District Committee, 6 MLC 1293, 1294, MCR-2702 (July 13, 1979). Only
3 employees who have significant access or exposure to confidential information
4 concerning labor relations matters, management's position on personnel matters, or
5 advance knowledge of the employer's collective bargaining proposals are excluded as
6 confidential. City of Everett, 27 MLC 147, 150, MCR-4824 (May 23, 2001). Access to
7 sensitive financial and personnel records alone is insufficient to designate an employee
8 as confidential. Town of Wareham, 36 MLC 76, 79, WMAM-08-1017 (October 28, 2009).
9 Further, coverage under the Law must be based upon actual, not potential duties and
10 future responsibilities. Town of Chelmsford, 27 MLC 41, 43, CAS-3394 (November 6,
11 2000). The CERB has consistently declined to exclude employees from coverage under
12 the Law based solely on the employer's representation that the employee will perform
13 confidential duties at some time in the future. Id.

14 For purposes of this analysis, we shall assume, and neither party contests, that as
15 the Principal/Director of Career TEC, Jarvis is a managerial employee who is otherwise
16 excluded from collective bargaining under Section 1 of the Law. Therefore, the issue to
17 be decided is whether, in her position of Administrative Assistant, Wieners has a
18 continuing and substantial relationship with Jarvis such that there is a legitimate
19 expectation of confidentiality in their routine and recurring duties.

20 Based on the information set forth above, we find no basis to conclude that
21 Wieners' actual duties provide her with significant access or exposure to confidential
22 information concerning labor relations matters, management's position on personnel

1 matters, or advance knowledge of the employer's collective bargaining proposals. We
2 therefore conclude that she is not a confidential employee.

3 The Employer raises a number of arguments that do not persuade us otherwise.
4 Most of those arguments center on the Employer's claim that it intends Wieners to take
5 on various duties at some time in the future "as she becomes more familiar with her job
6 responsibilities."¹⁵ For example, the Employer speculates that once there is a contract
7 with the Union, Jarvis will serve as the first step in the grievance procedure and Wieners
8 will assist him by arranging grievance hearings, attending the meetings, taking notes, and
9 assisting with drafting the grievance response. However, because the Employer
10 acknowledges that the duties do not yet exist, they do not render Wieners a confidential
11 employee. Town of Chelmsford, 27 MLC at 43.

12 We reach the same conclusion with respect to the Employer's claim that at some
13 point "soon" it intends to give Wieners the responsibility of scheduling Jarvis' meetings.
14 Not only does this lack merit for the reason stated above, but the Employer also has not
15 put forth any evidence as to why scheduling Jarvis' meetings would constitute a
16 confidential duty.

¹⁵ The Employer likewise explained that it had yet to assign Wieners certain duties because she was still in the "training stages" of the position and/or because of her "short tenure" in the role. We note, however, that the Employer first made these claims to the DLR in August 2023, when Wieners had already been in the position for eight months. It made similar claims in the final filing that it submitted in February 2024, when Wieners had been in her position for over a year. There is no evidence other than the Employer's bare assertion that supports its alleged intent to assign her additional duties in the future or that she needs further training prior to being assigned job duties that might qualify her as a confidential employee.

1 The Employer also asserts that Wieners' job description "denotes that this is a
2 confidential position due to the nature of the position." Although the Employer does not
3 elaborate on this claim, to the extent the Employer is suggesting that the references to
4 the term "confidential" in the job description support its argument that Wieners is a
5 confidential employee, we disagree. As noted, the CERB examines an employees' actual
6 duties to determine whether an employee is confidential. Id. Similarly, the definitions of
7 'managerial' and 'confidential' employee under 150E "are to be applied to the facts of
8 each case and cannot be read to exclude individuals on the basis of their job title."
9 Littleton School Committee, 4 MLC 1405, 1410, MUP-2027 (October 27, 1977). This is
10 demonstrated by the fact that the job description for the Secretary of Occupational
11 Education, a bargaining unit position that the Employer does not challenge as
12 confidential, contains identical references to confidentiality. Accordingly, we decline to
13 find that Wieners is a confidential employee based solely on the contents of her job
14 description.

15 Finally, we address the case law the Employer cites in support of its argument.
16 The Employer points to Brookline School Committee, 30 MLC 71, CAS-03-3550 (October
17 24, 2003), where the CERB¹⁶ held that an administrative assistant to the Deputy
18 Superintendent was a confidential employee under Section 1. The Employer cites the fact
19 that in Brookline, the parties were not set to begin actual negotiations until the following
20 year, which meant that the assistant had not yet been exposed to collective bargaining
21 proposals. The Employer compares this to the fact that Wieners has not assisted with
22 the grievance process because the parties were still negotiating a contract. In Brookline,

¹⁶ References to the CERB include the former Labor Relations Commission.

1 however, the CERB noted specifically that it was not basing its determination that the
2 assistant was confidential based on potential future duties, rather, it was relying on the
3 duties she was already performing. Id. at 73. Because there is no evidence here that
4 Wieners is currently performing confidential duties, Brookline is inapposite.

5 The second case the Employer relies on, Chicopee Education Association, 36
6 MLC 42, CAS-08-3735 (September 17, 2009), similarly does not support its proposition.
7 Although both cases involve administrative assistants to the principal/director of
8 vocational schools, that is the extent of the comparison. In Chicopee, the incumbent
9 assisted the principal with labor relations duties by conducting research for the director to
10 use in collective bargaining, typing the director's proposed changes to the CBA and
11 proposed subjects for bargaining, and often had advance notice of confidential labor
12 relations information, including potential bargaining proposals. Id. at 44. Wieners does
13 not perform any comparable tasks.

14 Instead, Wieners' situation is comparable to that of the administrative assistant in
15 City of Everett, 27 MLC at 147. In that case, the employer argued that the incumbent was
16 a confidential employee because her future duties would include attending Step 2
17 grievance hearings, typing and mailing Step 2 decisions to the parties, and researching
18 and costing out collective bargaining proposals. The CERB found, however, that the
19 incumbent had not yet performed those duties. Instead, after seven weeks in the position,
20 it found that the incumbent's duties consisted of answering the telephone, typing
21 correspondence, and maintaining (as opposed to typing or creating) grievance and
22 personnel files. 27 MLC at 148. Based on those findings, CERB concluded that the
23 administrative assistant was not a confidential employee because she did not have

1 significant access or exposure to confidential information. Id. at 150. Similarly, in Town
2 of Chelmsford, 27 MLC at 41, despite the Employer's claims that the administrator would
3 perform duties related to collective bargaining in the future, the CERB found that she was
4 not confidential because in the nine months she was in the position she had not yet
5 performed confidential duties. 27 MLC at 43.

6 Conclusion

7 For the foregoing reasons, we conclude that Stacy Wieners is not a confidential
8 employee within the meaning of Section 1 of the Law. We therefore decline to modify the
9 certification to exclude her from the bargaining unit.¹⁷

SO ORDERED.

COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



KELLY STRONG, CERB MEMBER



VICTORIA B. CALDWELL, MEMBER

¹⁷ If the Administrative Assistant to the Principal/Director of CareerTEC should perform confidential job duties in the future, the parties are free to voluntarily discuss and resolve the unit placement issue or the Employer may timely file a petition with the DLR.