

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

In the Matter of

FRAMINGHAM HOUSING AUTHORITY

and

MASSACHUSETTS PUBLIC EMPLOYEE
COUNCIL

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Case No. WMAM-16-5045

Date Issued: June 28, 2016

CERB Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, CERB Member
Katherine G. Lev, CERB Member

DECISION UPON REINVESTIGATION OF CERTIFICATION

Summary

The primary issue in this case is whether the positions of Musterfield Property Manager, Resident Service Coordinator, and the FUPS/Mixed Population Coordinator at the Framingham Housing Authority (Employer) are appropriately included in a bargaining unit of administrative and clerical employees. For the reasons set forth below, the Commonwealth Employment Relations Board (CERB) concludes that all three positions are appropriately included in the unit. The January 25, 2016 certification therefore remains intact, but should include a technical amendment that incorporates the DLR's standard exclusionary language into the unit description.

1 Statement of the Case

2 On January 15, 2016, pursuant to M.G.L. 150E, §§ 1 and 4 and DLR Regulations
3 456 CMR 14.19, the Massachusetts Public Employee Council (Union) filed a Written
4 Majority Authorization (WMA) Petition with the Department of Labor Relations (DLR)
5 seeking to represent a fifteen (15) employee bargaining unit consisting of administrative
6 and clerical positions at the Framingham Housing Authority. On January 25, 2016, the
7 DLR certified the following unit: "All full-time and regular part-time administrative and
8 clerical employees employed by the Framingham Housing Authority."

9 By letter dated May 17, 2016, the DLR notified the parties that it was
10 reinvestigating the January 25, 2016 certification pursuant to DLR Regulations 456
11 CMR 14.15. The DLR reinvestigated this certification for four reasons: 1) the Neutral's
12 numerically incorrect January 25, 2016 Inspection Report and corresponding failure to
13 "investigate and resolve" outcome-determinative challenges pursuant to 456 CMR
14 14.19(8); 2) the omission of standard DLR exclusionary language from the January 25,
15 2016 certification; 3) the parties' ongoing disagreement about the inclusion of certain
16 titles in the bargaining unit; and 4) the Union's May 16, 2016 Charge of Prohibited
17 Practice (Charge).¹

18 During the reinvestigation, the DLR requested information from the parties, such
19 as job descriptions and affidavits regarding actual job duties, to clarify whether the four

¹ On May 16, 2016, the Union filed a charge with the DLR alleging that the Employer had engaged in prohibited practices within the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of M.G.L. 150E by refusing to negotiate a collective bargaining agreement and by unilaterally changing working conditions. The charge, which was docketed as MUP-16-5038, is pending.

positions that the Employer challenged during the certification process involve managerial, confidential, or supervisory employees. The Employer responded on May 20, 2016 by providing a package of documents including job descriptions and affidavits. On May 31, 2016, the Union provided two written response statements. Because the parties' responses raise no material disputes of fact, the CERB issues this decision based upon the following facts.

Facts

1. Procedural History

On January 15, 2016, the Union filed a WMA Petition seeking to represent a 15-employee bargaining unit consisting of administrative and clerical employees employed by the Employer. The Union attached to its WMA Petition a list of employees:²

1. Receptionist
2. Maintenance Clerk
3. Housing Manager (1)
4. Housing Manager (2)
5. *Musterfield Property Manager

² For ease of reference, an asterisk (*) identifies each Employer challenge.

- 1 6. After School Coordinator/Certification Clerk
- 2 7. Modernization Clerk
- 3 8. Senior Tenant Selector
- 4 9. Designated Housing Program Coordinator
- 5 10. Certification Clerk
- 6 11. Certification Clerk
- 7 12. *Resident Service Coordinator
- 8 13. Chinese Interpreter
- 9 14. *Finance Manager
- 10 15. *Accounting Coordinator

11 On January 20, 2016, the DLR issued a Notice That A Petition For Certification
12 By Written Majority Authorization Has Been Docketed (Notice), indicating that the Union
13 sought to represent a unit consisting of:

14 All full-time and regular part-time administrative and clerical employees
15 employed by the Framingham Housing Authority; but excluding all
16 managerial, confidential, casual, and other employees.

17 The Employer did not provide its own list of employees pursuant to 456 CMR
18 14.19 (5). Instead, by letter dated January 22, 2016, the Employer challenged the
19 inclusion of four positions in the proposed unit: Musterfield Property Manager; Resident
20 Service Coordinator; Finance Manager and Accounting Coordinator.³ In support of its
21 challenges, the Employer provided job descriptions for the Property Manager and
22 Finance Manager.

³ In its January 22, 2016 objections, the Employer argued that the Finance Manager and Accounting Coordinator were both managerial employees and, in its May 31, 2016 response, the Union stipulated that the Finance Manager and Accounting Coordinator did not belong in the unit. We adopt the stipulation based on the Employer's description of these titles as managerial employees in charge of the Finance and Human Resources Department, respectively. See Town of Hopedale, 20 MLC 1059, 1067, MCR-4196 (July 12, 1993) (when certain issues raised by a representation petition are resolved by the parties' stipulations, the CERB will adopt the stipulations if they do not conflict with the Law or established CERB policy). As described above, however, the Union otherwise objected to the Employer's challenges.

1 On January 25, 2016, the DLR Neutral who conducted the inspection filed a
2 Confidential Inspection Results Report (Report) pursuant to DLR Regulation 456 CMR
3 14.19. The Report indicated the following: that the Union had nine (9) written majority
4 authorization cards in support of the 15-employee unit described in its January 15, 2016
5 WMA Petition; that the Employer had challenged the inclusion of four (4) positions in the
6 unit; and that two individuals in the four challenged positions had signed written majority
7 authorizations. On the Inspection Report, the Neutral wrote, "[e]ven with challenges,
8 petitioner would have 7/11 cards signed." On January 25, 2016, the DLR certified a unit
9 described as: "All full-time and regular part-time administrative and clerical employees
10 employed by the Framingham Housing Authority."

11 2. Disputed Unit Positions

12 In its May 20, 2016 reinvestigation response, the Employer renewed its January
13 22, 2016 objections to the titles of Finance Manager, Accounting Coordinator,
14 Musterfield Property Manager and Resident Service Coordinator. It also raised a new
15 objection to inclusion of the FUPS/Mixed Population Coordinator position, which neither
16 party identified as a potential bargaining unit member in January 2016. As indicated
17 above, in its May 31, 2016 response, the Union stipulated that the Finance Manager
18 and Accounting Coordinator should be excluded from the unit, but otherwise objected to
19 the Employer's challenges. Thus, the parties currently disagree about the inclusion of
20 three positions in the unit: the Musterfield Property Manager, the Resident Service
21 Coordinator, and the FUPS/Mixed Population Coordinator. We discuss those titles'
22 duties and the parties' arguments below.

23 a) Musterfield Property Manager

1 In its January 22, 2016 list of challenges, the Employer stated that the
2 Musterfield Property Manager is a manager because she provides "informational input
3 regarding policy," "makes recommendations on policy changes," has "substantive input"
4 with respect to policy decisions, and manages the After School Program
5 Coordinator/Certification Clerk (Carey). In its May 20, 2016 response to the DLR, the
6 Employer provided an affidavit from the incumbent in the position affirming the job
7 description included in the paragraphs below. Although the Employer reiterated its
8 opposition to inclusion of this position in the bargaining unit, it did not elaborate beyond
9 stating that the position is "disputed" because she is a manager.

10 In its May 31, 2016 response, the Union stated that the incumbent has no
11 authority to make any decisions, or independently change any policies regarding
12 budgets, personnel, procurement, or workplace rules, nor does she have authority to
13 hire, fire, promote, transfer, discipline, layoff and recall employees, adjust schedules or
14 approve overtime. The Union emphasized that she does not make policy decisions or
15 determine objectives and that her input regarding policies is strictly informational and
16 advisory because the authority to adopt or change policies lies exclusively with the
17 Executive Director and the Framingham Housing Board of Commissioners. The Union
18 further stated that her supervision of the After School Program Coordinator/Certification
19 Clerk is limited to signing his payroll sheet, and that she has no authority to make
20 personnel decisions.

21 The Musterfield Property Manager job description states:

22 The property manager is responsible for a large multifamily housing
23 complex (the Musterfield at Concord Place). It is the property manager's
24 responsibility to ensure effective management of the properties on a day-

1 to-day basis. The Property Manager reports directly to the Director of
2 Public Housing.
3

4 As this position requires continual contact with professional peers, staff,
5 residents, clients, contracts (sic) and [the] outside community at large, the
6 Property Manager must demonstrate effective written and oral
7 communication skills. While working with the Executive Director, senior
8 members of the Framingham Housing Authority and other office
9 administrative staff, the Property Manager must be able to work
10 collaboratively in the development, revision and implementation of all site
11 policies, procedures, programs and systems.
12

13 Administrative duties include, but are not limited to the following:
14

- 15 • Achieving site compliance with all applicable requirements to
16 regulatory agencies (i.e., Affirmative Action goals, economic goals,
17 etc.).
- 18 • Enforcing lease regulations, following through on violations of the lease
19 with respect to state and federal regulations governing evictions.
20 Working closely with, and reporting to, the Deputy Director with respect
21 to legal actions.
- 22 • Implementing and enforcing all policies governing the site and making
23 recommendations for policy changes whenever necessary.
- 24 • Working closely with the Director of Operations to insure that all duties
25 and responsibilities for the day-to-day management of the site are met.
26 Informing the Executive Director immediately of any issues with which
27 they may need assistance.
- 28 • Preparing all monthly closing reports for the end of each accounting
29 month. Correct all inconsistencies to ensure proper closing.
- 30 • Preparing quarterly reports for tax credit properties.
- 31 • Completing year end Spectrum reports for tax credit properties.
- 32 • Meeting with residents to discuss specific correctable lease violations
33 and conducting the necessary follow up to insure that all residents are
34 complying with the terms and conditions of agreements. Making
35 referrals to and working with the Resident Service Coordinator when
36 necessary.
- 37 • Following through on violations of the lease with respect to state,
38 federal and local regulations governing evictions. Aggressively ensure
39 the safety of the resident community by taking eviction action in violent
40 crime and drug related lease violations. Ensure that all duties and
41 responsibilities for the day-to-day management of the property are met.
42 • All other duties as assigned by Senior Management.

- Training will be provided on tax credits.
- Certification or ability to receive within one year as Specialist in Housing Credit Management (SHCM).

A second job description that the Employer provided incorporates some of the same duties listed above, as well as the following other duties:⁴

- Direct supervision of the Maintenance Mechanic.
- Issuing final approval for all site purchases, securing Executive Director's approval when necessary. Continuously reviewing expenses against budget to insure performance within budgetary constraints.
- Developing the annual operating budget for the property with the Executive Director.
- Developing a long-range plan for the property with the Executive Director, the Director of Operations, and the Maintenance Mechanic.
- Supervising all site personnel.
- Making recommendations to the Executive Director for hiring of all other on-site staff positions.
- Making recommendations to the Executive Director, in accordance with the Personnel Policy, for employment terminations.
- Assisting in the coordination of programs and services with the Deputy Director, and working to ensure that all parties work effectively together.
- Overseeing day-to-day maintenance schedules, the activities of the Maintenance Mechanic and maintenance staff, and the overall maintenance program for the property.
- Working with the Executive Director, the Director of Operations, and Property Superintendent in developing long and short range maintenance planning.
- Performing annual preventative maintenance inspections of all units on-site, in accordance with the Preventative Maintenance Plan. This includes scheduling the preventive maintenance work orders, coordinating this scheduling with the Maintenance Superintendent, and following the established filing and reporting procedures.
- Overseeing compliance with established office procedures.
- All other duties as assigned by the Executive Director.

⁴ Both documents are undated and it is not clear which document is more recent. Nevertheless, the incumbent affirmed in an affidavit that both accurately describe her duties.

1 b) Resident Service Coordinator

2 In its January 22, 2016 list of challenges, the Employer stated that the Resident
3 Service Coordinator should be excluded from the bargaining unit because she is a
4 casual temporary employee. The Employer emphasized that the incumbent's job future
5 depends on periodic funding availability and renewals from a federal grant that expires
6 on August 31, 2016. In its May 20, 2016 response to the DLR, the Employer provided
7 an affidavit from the incumbent affirming the job description included in the paragraphs
8 below. Although the Employer reiterated its opposition to the Resident Service
9 Coordinator's inclusion in the bargaining unit, it did not elaborate beyond stating that her
10 position is "disputed." The Union stated in its May 31, 2016 response that the Resident
11 Service Coordinator job is a 37.5 hours per week position, with benefits, that the
12 incumbent has filled for the past 2 years.

13 The Resident Service Coordinator job description states:

14 The primary function of the Resident Service Coordinator (RSC) is to
15 effectively assist residents enhancing the quality of their daily lives. This
16 may mean enabling them to more fully and successfully participate in the
17 social, educational and/or economic mainstream. The position provides
18 residents with information about and access to local services and
19 resources that can assist them in pursuing opportunities and achieving life
20 objectives. The resident service coordinator is an integral part of the
21 housing team and plays a critical role in the overall positive maintenance
22 of the property for the enjoyment of its residents and the respect of its
23 neighbors.

24 Responsibilities

- 25 • Welcome new residents, establish contact with existing residents, and
26 explain the resident services program, its offerings, and the RSC role
27 in assisting residents who want to access local service resources.
28
29

- 1 • Help set a tone of inclusion and non-discrimination in the resident
2 community.
- 3 • Identify, assess, select, develop and maintain referral relationships
4 with local agencies that effectively assist residents to achieve their
5 opportunities and objectives in life.
- 6 • Provide supportive linkages between residents and referral agency
7 staff when residents or agencies request assistance. Document these
8 efforts.
- 9 • Refer concerns about lease violations to the Housing Authority and
10 work as part of the management team when a resident is identified as
11 being in jeopardy of eviction. Offer linkages and referral support to the
12 resident to positively and quickly rectify the situation. Document these
13 efforts.
- 14 • Establish program targets. Consistently track and measure progress.
15 Regularly report program outcomes to internal and external
16 stakeholders. Analyze and use outcomes data as the basis for
17 continuous program improvement.
- 18 • Identify and assess individual and family needs when appropriate;
19 inform the resident of available resources and provide support in
20 accessing services successfully. Document these efforts.
- 21 • Help to facilitate resident meetings and community-organizing and
22 social activities as desired by residents.
- 23 • Support residents to enhance the quality of their lives; encourage and
24 empower them toward self-sufficiency.
- 25 • When requested work with the housing authority in mediating conflicts
26 between residents. Document these efforts.
- 27 • Effectively communicate with residents by newsletter, flyer, bulletin
28 board etc., making sure that communication is inclusive of language
29 differences and the visually impaired.
- 30 • Complete other housing and resident related assignments as directed
31 by the supervisor.

32 •

33 Requirements

- 34
- 35 • HUD requirements state the RSC's will have a Bachelor's degree or
36 higher in Social Work, Psychology, Gerontology, Counseling or related
37 specialty
- 38 • OR significant work experience relevant to the position
- 39 • Knowledge of relevant state, federal, and local resources and
40 agencies.

1
2 c) FUPS/Mixed Population Coordinator

3 In its May 20, 2016 response to the DLR, the Employer stated that the
4 FUPS/Manager/Mixed Population Coordinator is a manager and was not included on
5 the list of petitioned-for employees that the Union submitted on January 15, 2016. The
6 Employer stated that the FUPS/Mixed Population Coordinator oversees the Resident
7 Service Coordinator, but provided no other details regarding Horning's duties. The
8 Union stated in its May 31, 2016 response that it seeks to include the FUPS/Mixed
9 Population Coordinator in the unit and explains that it inadvertently omitted her from the
10 employee list attached to its January 15, 2016 petition in WMAM-16-5045.

11 Opinion⁵

12 For the following reasons, the CERB has decided to leave the January 25, 2016
13 certification intact, but is issuing an amended certification with a technical amendment
14 to incorporate the DLR's standard exclusionary language into the unit descriptions.

15 1. Investigation and Resolution of Outcome-Determinative Challenges

16 In January of 2016, the Union provided 9 written majority authorization cards in
17 support of its proposed 15 employee unit in WMAM-16-5045. The Neutral's January 25,
18 2016 Inspection Report indicates that the Employer raised four challenges, two of which
19 affected the Union's written majority authorization cards. (The two other challenges did
20 not involve signed cards.) The Neutral stated on the Inspection Report that, "[e]ven with
21 the challenges, petitioner would have 7/11 cards signed."

⁵ The CERB's jurisdiction is not contested.

1 The Neutral's analysis was incorrect because the Union initially sought a 15
2 employee unit, not an 11 employee unit. The Employer did not provide its own list of
3 employees pursuant to 456 CMR 14.19 (5); instead it filed challenges to the list the
4 Union provided with its petition. Thus, pursuant to DLR Regulation 456 CMR 14.19(8),
5 (the Neutral was required to determine whether a majority of the employees on the
6 union's list had signed valid written majority authorizations and whether there were
7 sufficient number of challenges to affect the result of the written majority authorization
8 process. Because the list the Union provided contained 15 titles and names, the Union
9 needed 8 of 15 written majority authorization cards to establish its majority of the
10 proposed bargaining unit. The Union submitted 9 cards and the Employer's challenges
11 impacted 2 of those cards, leaving 7 unchallenged cards. Because this was less than
12 the majority needed, the Employer's January 2016 challenges were outcome
13 determinative and subject to investigation by the Neutral pursuant to DLR Regulation
14 456 CMR 14.19(8).

15 We conclude, however, that the Neutral's failure to investigate the Employer's
16 challenges in January 2016 is not fatal to the January 25, 2016 certification. As
17 indicated above, in January 2016, the Employer challenged the inclusion of the Finance
18 Manager, the Accounting Coordinator, the Musterfield Property Manager and the
19 Resident Service Coordinator. In its May 31, 2016 response, the Union stipulated that
20 the Finance Manager and the Accounting Coordinator Crandall do not belong in the
21 unit. For reasons described below, we find that the Employer would not have prevailed
22 on either of the two remaining challenges regarding the Musterfield Property Manager
23 or the Resident Service Coordinator. Therefore, because the Union submitted 9 written

majority authorization cards for a 14-person unit,⁶ we find that the January 25, 2016 certification of the Union's majority status to be valid, with the exception of a technical error described in the section below.

2. Exclusionary Language

The unit description in the January 25, 2016 certification omitted the standard DLR language excluding "all managerial, confidential, casual and other employees." The exclusionary language was included in the unit description set forth in the DLR's January 20, 2016 Notice of Petition. Although the omission of the exclusionary language was only a technical error, the absence of such standard language is contrary to the principles of unit determination set forth M.G.L. Chapter 150E, §3. We accordingly issue an amended certification containing the proper language.

3. Disputed Positions

For the reasons set forth below, we find that the Musterfield Property Manager and the FUPS/Mixed Population Coordinator are not managerial employees, and that the Resident Service Coordinator is not a casual employee. We therefore conclude that the Musterfield Property Manager, the Resident Service Coordinator, and the FUPS/Mixed Population Coordinator should be included in the bargaining unit certified on January 25, 2016.

⁶ Although the Union agreed that 2 of the titles on its 15-person list were not appropriately included in the unit, it seeks to include one additional title, the FUP/Mixed Population Coordinator. As explained in the body of our decision, we find that this title is properly included in the petitioned-for unit. Thus, there are 14 employees in the appropriate bargaining unit, i.e., $(15-2) + 1 = 14$.

1 Managerial Status

2 Section 1 of M.G.L. c. 150E, (the Law) contains the following three-part test to
3 determine whether a person is a managerial employee:

4 Employees shall be designated as managerial employees only if they (a)
5 participate to a substantial degree in formulating or determining policy, or
6 (b) assist to a substantial degree in the preparation for or the conduct of
7 collective bargaining on behalf of a public employer, or (c) have a
8 substantial responsibility involving the exercise of independent judgment
9 of an appellate responsibility not initially in effect, in the administration of a
10 collective bargaining agreement or in personnel administration.

11
12 Employees are excluded from an appropriate bargaining unit as managerial
13 under Section 3 of the Law only if the employees' actual duties and responsibilities
14 satisfy any one of the three criteria set out above. Town of Bolton, 25 MLC 62, 66,
15 MCR-4562 (July 10, 1998). The CERB traditionally applies all statutory exclusions from
16 collective bargaining narrowly, so as not to deprive employees not otherwise managerial
17 of the right to bargain collectively through representatives of their own choosing.
18 Commonwealth of Massachusetts, 6 MLC 1026, 1028, CAS-2291 (May 9, 1979).
19 Exercise of supervisory authority, without more, does not make an individual
20 "managerial" within the meaning of the Law. Worcester School Committee, 3 MLC
21 1653, 1672, MUP-2044 (April 29, 1977).

22 The Employer argues that the Musterfield Property Manager and the
23 FUPS/Mixed Population Coordinator are managers. In its January 22, 2016 list of
24 challenges, the Employer argued that the Musterfield Property Manager is a manager
25 because she provides "informational input regarding policy," "makes recommendations
26 on policy changes," has "substantive input" with respect to policy decisions, and
27 manages the After School Program Coordinator/Certification Clerk. In its May 20, 2016

1 response to the DLR, the Employer reiterated its opposition to inclusion of Musterfield
2 Property Manager in the bargaining unit but did not elaborate beyond stating that the
3 position is "disputed." The Employer also argued in its May 20, 2016 response that the
4 FUPS/Mixed Population Coordinator is a manager because she oversees the Resident
5 Service Coordinator.

6 The Union denies in its May 31, 2016 response that the Musterfield Property
7 Manager is a managerial employee. It claims that the incumbent in this title has no
8 authority to make any decisions, or independently change any policies regarding
9 budgets, personnel, procurement, or workplace rules, nor does she have authority to
10 hire, fire, promote, transfer, discipline, layoff and recall employees, adjust schedules or
11 approve overtime. The Union explained that authority to adopt or change policies lies
12 exclusively with the Executive Director and the Framingham Housing Board of
13 Commissioners. The Union emphasized that the incumbent does not make policy
14 decisions or determine objectives and that her input regarding policies is strictly
15 informational and advisory. Further, the Union argues that her supervision of the After
16 School Program Coordinator/Certification Clerk is limited to signing his payroll sheet,
17 and that she has no authority to make personnel decisions. With respect to
18 FUPS/Mixed Population Coordinator, the Union does not deny that she supervises
19 Resident Service Coordinator, but seeks to include this title in the bargaining unit.

20 We do not find that the Musterfield Property Manager or the FUPS/Mixed
21 Population Coordinator perform duties that meet any part of the managerial test. First,
22 based on the undisputed job descriptions, the record does not indicate that the
23 FUPS/Mixed Population Coordinator participates at any level in policy-related decisions,

1 and the Musterfield Property Manager's role in policy formulation is consultative at best.
2 See Town of Bolton, 25 MLC at 66 ("Neither limited participation in the decision-making
3 process, nor attendance and participation in policy making discussions is sufficient to
4 consider an employee 'managerial' if the person's input is merely informational or
5 advisory in nature.").

6 Second, the record does not indicate that either the Musterfield Property
7 Manager or the FUPS/Mixed Population Coordinator assist to a substantial degree in
8 the preparation for, or conduct of collective bargaining. In particular, the Musterfield
9 Property Manager merely assists the Executive Director in developing the annual
10 operating budget for the property, and the record does not indicate that the FUPS/Mixed
11 Population Coordinator participates in budgetary determinations.

12 Third, neither the Musterfield Property Manager nor the FUPS/Mixed Population
13 Coordinator has substantial responsibility involving the exercise of independent
14 judgment of an appellate responsibility not initially in effect, in the administration of a
15 collective bargaining agreement or in personnel administration. Construing the third
16 statutory test of a managerial employee, the CERB has determined that the words
17 "independent judgment" require that an employee exercise discretion without
18 consultation or approval, Town of Manchester-by-the Sea, 24 MLC 76, 81, MCR-4511
19 (March 6, 1998) (citing Wellesley School Committee, 1 MLC, 1389, 1408, MUP-2009,
20 CAS-2005 (April 25, 1975)). A coincidence of recommending and acceptance by a
21 higher authority is insufficient. Id. To be "substantial," the responsibility must not be
22 perfunctory or routine; it must have some impact and significance. Id. Finally, the
23 appellate authority must be exercised beyond the first step in a grievance-arbitration

1 procedure. Id. The exercise of supervisory authority to comply with the provisions of a
2 collective bargaining agreement is insufficient, standing alone, to satisfy this third
3 criterion. Id. (citing Town of Agawam, 13 MLC 1364, 1369, MCR-3511 (December 24,
4 1986) (other citations omitted)).

5 Here, while the Musterfield Property Manager supervises the After School
6 Program Coordinator/Certification Clerk and the Maintenance Mechanic, and the
7 FUPS/Mixed Population Coordinator oversees the Resident Service Coordinator, the
8 record does not indicate that either exercises independent judgment of an appellate
9 responsibility in personnel matters.

10 Further, we do not find that the limited supervisory authority of the Musterfield
11 Property Manager and the FUPS/Mixed Population Coordinator warrants excluding
12 them from an appropriate bargaining unit of administrative and clerical employees. The
13 record does not reflect that these employees they are “true” supervisors, who have the
14 independent authority to make, or the power to effectively recommend, personnel
15 decisions such as whether to hire, transfer, suspend, promote or discharge employees
16 or resolve grievances. Greater New Bedford Regional Vocational School Committee,
17 15 MLC 1040, 1045, MCR-3769 (July 3, 1988) (citing Board of Trustees, University of
18 Massachusetts, 3 MLC 1179 1205, SCR-2079 (October 15, 1976) (distinguishing
19 between employees who possess limited supervisory authority and true supervisors

1 who should not ordinarily be included in the same unit with the employees they
2 supervise).⁷

3 Resident Services Coordinator

4 Finally, we dismiss the Employer's challenge that the Resident Service
5 Coordinator position is a casual employee because it is grant funded. To determine
6 whether an employee is casual, the CERB examines four major factors affecting the
7 stability of the proposed bargaining relationship: continuity of employment, regularity of
8 work, the relationship of the work performed to the needs of the employer, and the
9 amount of work performed by the employees. Town of Wenham v. Labor Relations
10 Commission, 44 Mass. App. Ct. 195, 197 (1998).

11 There is no dispute that the Resident Service Coordinator has been a full-time
12 employee for two years. Based on this regularity of work and continuity of employment,
13 the employee's relationship with the Employer is not too casual to warrant inclusion in a
14 bargaining unit. Id. Further, the CERB has long held that the source of an employee's
15 salary funding is not dispositive of unit placement. Worcester County, 17 MLC 1352,
16 1361, MCR-3953 (December 5, 1990); Walpole School Committee, 12 MLC 1015 ,
17 1018, MCR-3499(June 19, 1985). City of Springfield, 2 MLC 1233, MCR-2135
18 (December 12, 1975). Accordingly, we dismiss this portion of the Employer's
19 challenges.


⁷ The Employer also argued that the Union failed to include the FUPS/Mixed Population Coordinator in the list of petitioned-for employees that the Union submitted on January 15, 2016. However, because we find that this position is not managerial and is an administrative clerical employee, it is appropriately included in what is now a 14-person unit. Further, including this title in the unit does not affect the Union's majority (9/14) status. We therefore dismiss this aspect of the Employer's challenges.

1 Conclusion

2 The January 25, 2016 certification remains in effect, but an amended
3 certification shall issue that includes the DLR's standard exclusionary language.

4 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD


MARJORIE F. WITTNER, CHAIR


ELIZABETH NEUMEIER, CERB MEMBER


KATHERINE G. LEV, CERB MEMBER

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the matter of	*	
	*	
FRAMINGHAM HOUSING AUTHORITY	*	
	*	Case No. WMAM-16-5045
and	*	
	*	
MASSACHUSETTS PUBLIC	*	Date Issued: June 28, 2016
EMPLOYEE COUNCIL	*	
	*	

AMENDED CERTIFICATION OF WRITTEN MAJORITY AUTHORIZATION

Pursuant to the provisions of M.G.L. c. 150E, § 4, as amended by Chapter 120 of the Acts of 2007, the **MASSACHUSETTS PUBLIC EMPLOYEE COUNCIL** filed a Petition for Certification by Written Majority Authorization seeking to represent a unit of employees employed by the **FRAMINGHAM HOUSING AUTHORITY** consisting of the following:

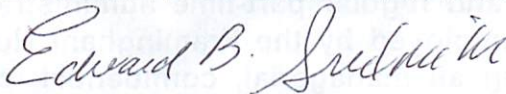
All full-time and regular part-time administrative and clerical employees employed by the Framingham Housing Authority, but excluding all managerial, confidential, casual and other employees.

On January 25, 2016, the Department of Labor Relations, acting as the neutral, issued its report of the confidential inspection of the evidence of written majority authorizations proffered by the **MASSACHUSETTS PUBLIC EMPLOYEE COUNCIL** and verified its majority support. Pursuant to DLR Regulations 456 CMR 14.15, the certification was reinvestigated. In accordance with the June 28, 2016 decision of the Commonwealth Employment Relations Board, the January 25, 2016

certification remains intact, but has been technically amended to incorporate the standard exclusionary language set forth above.

THEREFORE, by virtue of and pursuant to the power vested in the Department by Chapter 150E of the General Laws, IT IS HEREBY CERTIFIED that the **MASSACHUSETTS PUBLIC EMPLOYEE COUNCIL** has been selected by a majority of the above-described unit of employees as their representative for the purposes of collective bargaining, and that pursuant to Chapter 150E of the General Laws, the **MASSACHUSETTS PUBLIC EMPLOYEE COUNCIL** is the exclusive representative of the above-described unit of employees of the **FRAMINGHAM HOUSING AUTHORITY** for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

A handwritten signature in dark ink, reading "Edward B. Srednicki". The signature is written in a cursive, flowing style with a prominent initial "E".

EDWARD B. SREDNICKI
EXECUTIVE SECRETARY