

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

In the Matter of

CITY OF BOSTON

and

UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
AFL-CIO-CLC

Case No. MCR-23-10307

Date issued: April 2, 2024

CERB Members Participating:

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

Appearances:

████████████████████

- Representing the City of Boston<sup>1</sup>

Jillian Bertrand, Esq.

- Representing the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC

DECISION AND DIRECTION OF ELECTION

Summary

- 1 The issue in this case is whether the Commonwealth Employment Relations Board
- 2 (CERB) should grant a petition filed by the United Steel, Paper and Forestry, Rubber,

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<sup>1</sup> Attorney ██████████ represented the City during the hearing, but he withdrew his appearance and Attorney ██████████ filed an appearance before the decision issued.

1 Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-  
2 CIO-CLC (SENA or Union). The Union seeks an election to add all full-time and regular  
3 part-time employees of the City of Boston (City) in the Office of Youth Employment and  
4 Opportunity (OYEO), including the Office & Operations Manager; Data, Research &  
5 Evaluation Manager; Grant & Budget Manager; Senior Manager of Workforce & Career  
6 Readiness; Senior Manager of Engagement & Outreach; Employment & Payroll  
7 Coordinator; Youth & Career Development Coordinator; Strategic Partnerships &  
8 Engagement Manager; Outreach, Recruitment & Communications Coordinator; and  
9 Senior Manager of Employment, Payroll, & Development to its existing bargaining unit of  
10 administrative and supervisory City employees (citywide unit). The Union alternatively  
11 seeks to represent the petitioned-for positions in a stand-alone unit if the CERB denies  
12 its request for an add-on election.

13 The City opposes the Union's request for an add-on election but does not oppose  
14 an election for a stand-alone unit. The City also asserts that two positions, the Office and  
15 Operations Manager, and the Data, Research, and Evaluation Manager, are confidential  
16 and/or managerial employees within the meaning of Section 1 of M.G.L. c. 150E (the Law)  
17 and therefore cannot be included in any bargaining unit.

18 For the reasons set forth below, we find that the Office and Operations Manager  
19 and the Data, Research, and Evaluation Manager positions are not confidential or  
20 managerial employees under the Law. We further find that an election to add the  
21 petitioned-for positions in the OYEO, including the Office and Operations Manager  
22 position and the Data, Research, and Evaluation Manager position, to SENAs existing  
23 citywide unit is appropriate, and thus, we issue a direction of election.

1 Statement of the Case


2           The Union filed this petition on October 31, 2023. On December 13, 2023, a  
3 Department of Labor Relations (DLR) agent conducted a hearing at which all parties had  
4 the opportunity to be heard, to examine witnesses, and to introduce evidence. The City  
5 and the Union filed their post-hearing briefs on February 9, 2024.

6 Facts

7  
8           The parties entered into the following stipulations:

9 Stipulations of Fact

- 10           (1) The City of Boston (“City”) is a public employer within the meaning of Section  
11           1 of the Law.  
12  
13           (2) The Salaried Employees of North America (“SENA”), a division of the United  
14           Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial  
15           and Service Workers International Union, AFL-CIO, CLC (“USW”) is an  
16           employee organization within the meaning of Section 1 of the Law.  
17  
18           (3) SENALocal 9158 is an employee organization within the meaning of Section  
19           1 of the Law.  
20  
21           (4) The USW, acting for and through SENALocal 9158, collectively referred to  
22           as the “Union,” is the exclusive bargaining representative for a bargaining unit  
23           of administrative and supervisory employees employed by the City.  
24  
25           (5) The Union was certified as the exclusive bargaining representative for this  
26           unit on June 2, 1986.  
27  
28           (6) The City and the Union are parties to a collective bargaining agreement  
29           (“CBA”) which covered the period from October 1, 2020 through September  
30           30, 2023.  
31  
32           (7) The Office of Youth Employment and Opportunity (“OYEO”) did not exist at  
33           the time the bargaining unit was certified.  
34  
35           (8) The Union seeks to represent the following positions in OYEO:  
36           a. Office & Operations Manager  
37           b. Data, Research & Evaluation Manager  
38           c. Grant & Budget Manager  
39           d. Senior Manager of Workforce & Career Readiness

- 1 e. Senior Manager of Engagement & Outreach  
 2 f. Employment & Payroll Coordinator  
 3 g. Youth & Career Development Coordinator  
 4 h. Strategic Partnerships & Engagement Manager  
 5 i. Outreach, Recruitment & Communications Coordinator  
 6 j. Senior Manager of Employment, Payroll, & Development  
 7
- 8 (9) The parties agree that, except for Office & Operations Manager and Data,  
 9 Research & Evaluation Manager, all of the above-listed positions are  
 10 employees within the meaning of Section 1 of the Law.  
 11
- 12 (10) The position of Senior Manager of Employment, Payroll & Development is  
 13 currently vacant.  
 14
- 15 (11)  (Grants Manager) is not a City employee and therefore  
 16 inappropriate for inclusion in the petitioned-for unit. The parties reserve all  
 17 arguments with respect to inclusion of Grants Manager if/when the current  
 18 incumbent vacates the position and/or becomes a City employee.  
 19
- 20 (12) The job descriptions that were entered into the record as joint exhibits  
 21 accurately reflect the duties and requirements for those positions.  
 22
- 23 (13) The list of titles that were entered into the record as a joint exhibit accurately  
 24 reflect the positions in the [citywide] bargaining unit represented by the Union.  
 25
- 26 (14) The petitioned-for positions listed in stipulation 8 are currently not  
 27 represented for the purpose of collective bargaining.  
 28
- 29 (15) The [citywide] unit includes approximately 750 employees.  
 30
- 31 (16) The [citywide] unit includes employees from multiple City departments,  
 32 including:  
 33 a. Age Strong ??  
 34 b. Human Resources  
 35 c. Intergovernmental Relations  
 36 d. Office of Budget Management  
 37 e. Assessing Department  
 38 f. Auditing Department  
 39 g. Boston Fire Department  
 40 h. Boston Police Department  
 41 i. Boston Residents Jobs Policy  
 42 j. Boston Retirement System  
 43 k. Cemetery Division  
 44 l. City Clerk  
 45 m. Consumer Affairs & Licensing  
 46 n. Dept. of Innovation & Technology

- 1 o. Election Division
- 2 p. Inspectional Services Department
- 3 q. Law Department
- 4 r. Office of Economic Opportunity & Inclusion
- 5 s. Office of Streets
- 6 t. Parks Department
- 7 u. Procurement
- 8 v. Property Management
- 9 w. Public Facilities
- 10 x. Public Works
- 11 y. Registry Division
- 12 z. Supplier Diversity
- 13 aa. Transportation Department
- 14 bb. Treasury
- 15 cc. Veterans' Services
- 16 dd. Boston Center for Youth and Families
- 17
- 18 (17) OYEO is located in BCYF's Tobin Community Center at 1483 Tremont
- 19 Street, Boston MA 02120.
- 20
- 21 (18) OYEO includes the following positions: Executive Director; Deputy Director;
- 22 Office & Operations Manager; Data, Research & Evaluation Manager; Grant
- 23 & Budget Manager; Senior Manager of Employment, Payroll & Development;
- 24 Senior Manager of Workforce & Career Readiness; Senior Manager of
- 25 Engagement & Outreach; Employment & Payroll Coordinator; Youth & Career
- 26 Development Coordinator; Strategic Partnerships & Engagement Manager;
- 27 Outreach, Recruitment & Communications Coordinator.
- 28
- 29 (19) OYEO currently has ten employees (not including the Executive Director and
- 30 Deputy Director).
- 31
- 32 (20) The OYEO hours of operations are Monday through Friday, 9:30AM-5:30PM.
- 33
- 34 (21) OYEO employees have a thirty-five-hour workweek.
- 35
- 36 (22) Employees in the citywide bargaining unit have either a thirty-five or forty-
- 37 hour workweek.
- 38
- 39 (23) OYEO employees and employees in the citywide bargaining unit receive the
- 40 same vacation and sick leave allotments.
- 41
- 42 (24) All City employees receive similar health insurance benefits and are subject
- 43 to the same City policies and therefore do not factor in favor of or against
- 44 community of interest.
- 45

- 1 (25) OYEO employees and employees in the citywide bargaining unit are paid  
2 biweekly.  
3
- 4 (26) Excluding the OYEO Executive Director and Deputy Director, OYEO  
5 employees' pay grades and salary scales are as follows:  
6 a. Office & Operations Manager: MO-6 (\$53,320.50-\$74,235.24)  
7 b. Data, Research & Evaluation Manager: MO-6 (\$53,320.50-\$74,235.24)  
8 c. Grant & Budget Manager: MO-6 (\$53,320.50-\$74,235.24)  
9 d. Senior Manager of Workforce & Career Readiness: MO-8 (\$64,747.96-  
10 \$89,482.73)  
11 e. Senior Manager of Engagement & Outreach: MO-8 (\$64,747.96-  
12 \$89,482.73)  
13 f. Employment & Payroll Coordinator: MO-5 (\$48,085.30-\$67,985.94)  
14 g. Youth & Career Development Coordinator: MO-5 (\$48,085.30-  
15 \$67,985.94)  
16 h. Strategic Partnerships & Engagement Manager: MO-6 (\$53,320.50-  
17 \$74,235.24)  
18 i. Outreach, Recruitment & Communications Coordinator: MO-5  
19 (\$48,085.30-\$67,985.94)  
20 j. Senior Manager of Employment, Payroll, & Development: MO-8  
21 (\$64,747.96-\$89,482.73)  
22
- 23 (27) Citywide bargaining unit employees' pay scale and salary ranges are as  
24 follows:  
25 a. MM-3 (\$47,123.81-\$72,241.73)  
26 b. MM-4 (\$51,929.59-\$79,447/86)  
27 c. MM-5 (\$57,298.50-\$87,282.13)  
28 d. MM-6 (\$63,517.01-\$95,115.57)  
29 e. MM-7 (\$70,017.53-\$104,514.34)  
30 f. MM-8 (\$77,085.65-\$114,228.89)  
31 g. MM-9 (\$84,148.40-\$122,687.95)  
32 h. MM-10 (\$92,630.12-\$132,717.41)  
33 i. MM-11 (\$101,393.88-\$140,859.88)  
34 j. MM-12 (\$109,023.34-146,185.75)  
35 k. MM-13 (\$118,070.88-\$152,141.44)  
36 l. MM-14 (\$125,417.43-\$161,197.60)  
37
- 38 (28) All OYEO positions and all citywide bargaining unit positions require Boston  
39 residency at hire.  
40
- 41 (29) OYEO employees and employees in the citywide bargaining perform similar  
42 job functions.  
43
- 44 (30) Some, but not all, OYEO employees supervise other staff.  
45

- 1 (31) Some, but not all, employees in the citywide bargaining unit supervise other  
2 staff.
- 3
- 4 (32) Most positions in OYEO require 2-5 years of experience and a Bachelor's  
5 degree for most positions is preferred, but can be substituted for prior  
6 experience.
- 7
- 8 (33) Most positions in the citywide bargaining [unit] require 2-5 years of experience  
9 and a Bachelor's degree for most positions is preferred, but can be  
10 substituted for prior experience.

11 Additional Findings of Fact

12 Citywide Unit

13

14 *Bargaining History*

15

16 The DLR first certified SENA on June 2, 1986 as the exclusive representative of the

17 employees in the following unit:

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

25

26 The departments and type of positions included in this unit have changed over the  
27 years. In 1986, the City and the Union entered into agreements to exclude certain  
28 employees with the title of Principal Administrative Assistant. On or about April 17, 1987,  
29 the parties agreed to expand the bargaining unit into additional City departments not listed  
30 in the original certification. On March 25, 1988, the parties agreed to exclude certain  
31 positions from the bargaining unit and expand the bargaining unit to include other City  
32 positions.

1           On or about July 10, 1992, in a case docketed as MCR-4054, the Union filed a  
2 petition with the DLR<sup>2</sup> seeking to represent City employees working in the Division of  
3 Community Schools and Recreation Centers through an add-on election.<sup>3</sup> Subsequently,  
4 the Union filed an amendment to its petition to include supervisory personnel working in  
5 the Boston Community Schools and Recreation Center. The CERB<sup>4</sup> decided to accept  
6 the Union's amended petition and give the Union an opportunity to submit evidence on  
7 the appropriateness of a stand-alone unit for the supervisory personnel or, alternatively,  
8 the appropriateness for an add-on unit to the Union's existing supervisory unit. On the  
9 third day of the hearing for MCR-4054, the Union and the City stipulated to the  
10 appropriateness of a stand-alone unit for supervisory employees in the Boston  
11 Community Schools and Recreation Centers. The CERB adopted the parties' stipulation  
12 of the appropriate unit and ordered an election for the stand-alone unit.

13           By contrast, on or about September 1, 1992, in a case docketed as MCR-4126,  
14 the parties entered into a consent election agreement for an election to add employees  
15 in the City's Public Facilities Department to its existing citywide unit.<sup>5</sup> The Union prevailed

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<sup>2</sup> References to the DLR include the former Labor Relations Commission (LRC).

<sup>3</sup> The full procedural history of this petition is set forth in City of Boston, 19 MLC 1050, MCR-4054 (July 10, 1992).

<sup>4</sup> References to the CERB include the former LRC.

<sup>5</sup> The CERB takes administrative notice of the archived case file in MCR-4126. In their post-hearing briefs, both the Union and the City argued that the CERB had certified a separate unit of employees in the City's Public Facilities Department. The DLR's file demonstrates, however, that on August 10, 1992, the LRC approved a consent agreement for an election to add the Public Facilities employees to the citywide unit (with separate options for professional employees). The CERB issued a certification in the larger unit on September 1, 1992. See JX 6.



1 in the election. For reasons that are not clear from the record, in 2007, the Union and  
 2 the City entered into a second agreement to add employees from both the Public Facilities  
 3 Department, as well as the employees at issue in MCR-4054 from the Boston Community  
 4 Schools and Recreation Center, into the Union's citywide bargaining unit.

5 Article I of the Union and City's October 1, 2017 to September 30, 2020 collective  
 6 bargaining agreement (CBA) contains the following recognition clause:

7 **Section 1.** The City recognizes the Union as the exclusive representative,  
 8 for the purposes of collective bargaining relative to wages, hours and other  
 9 conditions of employment of all employees in the service of the City as  
 10 defined in MLRC Certification dated June 2, 1986, as amended by  
 11 Memorandum of Agreement between the parties dated April 17, 1987; and  
 12 as further amended by the agreed-upon merger of the former SENA 9158E  
 13 unit (Public Facilities/DND) and the former SENA 9158F unit (Boston Center  
 14 for Youth and Families) in the main SENA City-wide bargaining unit.

15  
 16 **Section 2.** The parties agree that with regard to the title of Principal  
 17 Administrative Assistant only, inclusion in, or exclusion from the bargaining  
 18 unit shall be determined as follows:

- 19  
 20 a) Positions graded at or below the rate of MM-7 shall be included in the  
 21 unit.  
 22 b) In the event that a Principal Administrative Assistant position is upgraded  
 23 beyond that of an MM8 without any substantial change in duties or responsibilities  
 24 the position shall remain in the bargaining unit.  
 25 c) Positions existing on the effective date of this Agreement at the rate of MM-8  
 26 shall be deemed included except for the positions listed in Appendix A.  
 27 d) Positions created after the effective date of this Agreement at the rate of  
 28 MM-8 shall be discussed by the Office of Personnel Management and local  
 29 Union officials as soon as it is known that such positions are needed. A  
 30 semiannual review by the Labor Management Committee referenced in  
 31 Article 17 shall be held upon request by the Union of such MM-8 positions  
 32 excluded. Should the Committee fail to agree on the Position's inclusion or  
 33 exclusion, the Union may file for arbitration on the issue of whether the City  
 34 has utilized the MM-8 Principal Administrative Assistant position to  
 35 undermine the bargaining unit.

36 **Section 3.** Each of the following positions shall be removed from the  
 37 bargaining unit as a confidential and/or managerial employee when the  
 38 incumbent as of November 1, 2016, vacates the position:  
 39

	Title	Department	Grade
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a	First Assistant Treasurer (Trs/Col)	Treasury-Collecting	MM-11
b	Director of State Relations	Intergovernmental	MM-08
c	Deputy Director of State Relations	Intergovernmental	MM-07
d	Employee Developer Coordinator	Human Resources	MM-08

1           General Information about Bargaining Unit Members

2  
3           As of the date of the hearing, SENA represented approximately 750 employees in  
4 the departments set forth in Stipulation 16. All bargaining unit members work either a 35-  
5 hour or 40-hour workweek. All City employees, including those in the citywide unit, receive  
6 similar health insurance benefits and are subject to the same City policies, including a  
7 residency requirement. Under the terms of the CBA, all bargaining unit members are  
8 entitled to yearly step increases and cost of living increases. Some SENA employees  
9 supervise other employees; others do not.

10           Most positions in the bargaining unit require two to five years of experience. A  
11 bachelor's degree for most positions is preferred and may be substituted for some of the  
12 required experience. SENA's unit has some employees who perform community outreach  
13 in the course of their job duties. Additionally, the unit has employees who work directly  
14 with the City's youth. The bargaining unit also includes positions that perform budget work  
15 and grants management, as well as duties associated with procurement, payroll, and  
16 other financial matters.

17           OYEO

18           The OYEO's primary function is to support the City's youth with employment  
19 opportunities during the summer and during the school year to help them successfully  
20 transition into adulthood. OYEO's offices are in Roxbury, Massachusetts. The Boston  
21 Center for Youth and Families (BYCF) is located in the same building.

1 In December of 2023, the City hired [REDACTED] ([REDACTED]) as the Executive  
2 Director of the OYEO. The Executive Director oversees the entire office. Deputy Director  
3 [REDACTED] ([REDACTED]) reports to [REDACTED] and is directly beneath her on the  
4 OYEO organization chart. The Union does not dispute that the Executive Director and  
5 Deputy Director positions for OYEO are managerial positions that should be excluded  
6 from the unit.

7 Four positions are directly beneath the Deputy Director on the OYEO organization  
8 chart: 1) the Grants & Budget Manager, 2) the Data, Research and Evaluation Manager,  
9 3) the Office and Operations Manager; and 4) the Grants Manager.<sup>6</sup> The Grants & Budget  
10 Manager position manages all grant-related initiatives, monitors OYEO's budget,  
11 oversees fiscal and stewardship responsibilities, and creates opportunities for funding  
12 and development to support programs, services, and activities. The City asserts that the  
13 Data, Research & Evaluation Manager and the Office and Operations Manager are  
14 confidential and/or managerial under the Law. The duties of those positions are described  
15 separately below.

16 Other titles that report to the Deputy Director include the: 1) Senior Manager of  
17 Employment, Payroll & Development, 2) Senior Manager of Workforce & Career  
18 Readiness, and 3) Senior Manager of Engagement & Outreach.<sup>7</sup>

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<sup>6</sup> As reflected in Stipulation 11, the Grants Manager is not a City employee, and the parties agree that this position is not appropriate for inclusion in the petitioned-for unit.

<sup>7</sup> These positions appear under the Officer and Operations Manager, Data, Research and Evaluation Manager, Grants & Budget Manager, and Grants Manager on the organizational chart, but do not have reporting lines to them.

1           The Senior Manager of Employment, Payroll & Development oversees the youth  
2 employment program. The Senior Manager of Employment, Payroll & Development  
3 supervises the Employment and Payroll Coordinators. The Employment and Payroll  
4 Coordinators support the Senior Manager of Employment, Payroll & Development, and  
5 assist in managing the recruitment, hiring, payroll, and timesheets for the youths that  
6 participate in the employment program.

7           The Senior Manager of Workforce & Career Readiness oversees the job training  
8 and retention portion of the employment program. The Senior Manager of Workforce &  
9 Career Readiness helps youth with the curriculum and necessary skills to succeed in the  
10 workforce. The Senior Manager of Workforce & Career Readiness supervises the Youth  
11 & Career Development Coordinator. The Youth & Career Development Coordinator helps  
12 to improve curriculum and access to the City's youth population.

13           Finally, the Senior Manager of Engagement & Outreach oversees the employment  
14 program's engagement and outreach to the youth community. The Senior Manager of  
15 Engagement & Outreach also oversees the engagement efforts and recruitment efforts  
16 for the department. The Senior Manager of Engagement & Outreach supervises the  
17 Strategic Partnerships & Engagement Manager and the Outreach, Recruitment, &  
18 Communications Coordinator. The Strategic Partnerships & Engagement Manager  
19 builds relationships with non-profit organizations that want to participate in the  
20 employment program. The Outreach, Recruitment, & Communications Coordinator is  
21 responsible for supporting OYEO's outreach and recruitment efforts.

22           As set forth in the stipulations, the salaries of the petitioned-for positions, including  
23 the Office and Operations Manager and Data, Research & Evaluation Manager range

1 from MO-5 – MO-8 the Mayor’s (MO) salary scale, ranging from a low of \$48,085 to a  
2 high of \$89,482.73. They receive yearly step-increases on their employment anniversary  
3 dates. OYEO employees have a 35-hour workweek. Most positions in OYEO require two  
4 to five years of experience. A bachelor’s degree for most positions is preferred and can  
5 be substituted for prior experience.

#### 6 Managerial and Confidential Status

7 Where the Employer asserts that the Office and Operations Manager and the Data,  
8 Research and Evaluation Manager should be excluded from the proposed unit because  
9 they are managerial or confidential employees within the meaning of Section 1 of the Law,  
10 we review their duties in detail below.

#### 11 Office and Operations Manager<sup>8</sup>

##### 12 Duties

13 The Office and Operations Manager is responsible for supporting OYEO’s day-to-  
14 day operations, managing the procurement and purchasing of items and supplies, and  
15 providing general office support.<sup>9</sup> The Office and Operations Manager also manages  
16 relationships with vendors, and handles IT issues and fleet management.<sup>10</sup> As stated

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<sup>8</sup> The Union called the incumbent in this position, [REDACTED], as a witness during the hearing. [REDACTED] testified that he has held this position for nine years and five months.

<sup>9</sup> The Office and Operations Manager’s job description states in relevant part: “The Office and Operations Manager is an integral part of the DYEE team, who will primarily support purchasing and procurement, personnel related functions, fleet van/transportation coordination and management, equipment maintenance and management, IT inquiries, vendor management, etc.”

<sup>10</sup> OYEO has vehicles for Department staff to use.

1 above, the OYEO and BCYF are located in the same building, and the Office and  
2 Operations Manager serves as the primary liaison to the BCYF facilities team for building-  
3 related matters, such as coordinating repairs for an out-of-order restroom. The Office and  
4 Operations Manager also coordinates with BCYF staff if they need to borrow a van or  
5 reserve a conference room. Other duties include serving as a liaison to both the BCYF  
6 and the Department of Innovation and Technology (DoIT) regarding IT matters for staff  
7 members.

8 In conjunction with the City of Boston Auditing and Treasury Department, the Office  
9 and Operations Manager manages OYEO payroll accuracy and discrepancies, and  
10 reviews and approves employees' time summaries for every pay period. The Office and  
11 Operations Manager does not authorize vacation or other leave requests.

#### 12 Reporting, Supervisory, and Policy-Making Authority

13 The Office and Operations Manager reports directly to the Executive Director of  
14 OYEO. He does not supervise any employees, participate in interviews for new hires, or  
15 have independent authority to make hiring or firing decisions, and has no authority to  
16 discipline other employees.<sup>11</sup> The Office and Operations Manager also lacks the  
17 independent authority to make decisions regarding the office budget or any department  
18 policies, including procurement policies. Should the Executive Director consider  
19 structural? or policy changes, they would consult the Deputy Director, not the Office and

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<sup>11</sup> During cross-examination, [REDACTED] testified that during the one disciplinary incident that occurred since he had been in the position, the Director did not involve him in the decision to terminate the employee. [REDACTED] also testified that he did not manage any employees.

1 Operations Manager. In addition, the position does not play any role in confidential labor  
2 relations issues.

3 Data, Research & Evaluation Manager<sup>12</sup>

4 Duties

5 The Data, Research & Evaluation Manager is responsible for the collection and  
6 analysis of data that OYEO collects to assess and evaluate OYEO sponsored programs.<sup>13</sup>  
7 She also manages project workflow through a software program. The position's duties  
8 also include considering ways in which data collection can be more effective and efficient.

9 Reporting, Supervisory and Policy-Making Authority

10 The Data, Research & Evaluation Manager reports to the Executive Director and  
11 Deputy Director but does not supervise anyone in the office. Like the Office and  
12 Operations Manager, the Data, Research & Evaluation Manager does not have  
13 independent authority to hire or discipline individuals, and has no role in confidential labor  
14 relations or personnel matters.

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<sup>12</sup> The Union called the incumbent Data, Research & Evaluation Manager, [REDACTED]  
[REDACTED] ([REDACTED]), as a witness. At the time of the hearing, [REDACTED] had held that  
position for three months.

<sup>13</sup> The Data, Research & Evaluation Manager's job description states in relevant part:

The Data, Research and Evaluation Manager is an integral part of the DYEE team, who will serve as the lead staff member to understand youth workforce development research objectives, assist in developing and advancing strategy, vision, project creation and implementation utilizing research based practices and undertake research specific proposal activities and evaluate outcomes. This person will primarily carry out the research, evaluation and assessment of the SuccessLink youth employment program, workforce and career readiness services and youth civic engagement and outreach programs and initiatives.

1 The Data, Research & Evaluation Manager is not consulted if or when the Executive  
2 Director considers any organizational or policy changes. Should the Executive Director  
3 consider organizational or policy changes, they would consult the Deputy Director.  
4 Although the data that the Data, Research & Evaluation Manager collects can be used to  
5 shape OYEO or City policies, the Data, Research and Evaluation Manager is not  
6 responsible for creating those policies – she is just responsible for collecting and  
7 analyzing the data.

8 Opinion<sup>14</sup>

9 We first consider the Employer's argument that the two disputed titles should be  
10 excluded from the unit because they are managerial and/or confidential employees within  
11 the meaning of Section 1 of the Law.

12 Managerial Employees

13 Section 1 of the Law contains the following three-part test to determine whether a  
14 person is a "managerial" employee:

15 Employees shall be designated as managerial employees only if they (a)  
16 participate to a substantial degree in formulating or determining policy, or  
17 (b) assist to a substantial degree in the preparation for or the conduct of  
18 collective bargaining on behalf of a public employer, or (c) have a  
19 substantial responsibility involving the exercise of independent judgment of  
20 an appellate responsibility not initially in effect, in the administration of a  
21 collective bargaining agreement or in personnel administration.

22  
23 Employees are excluded from an appropriate bargaining unit as managerial under  
24 Section 3 of the Law only if the employees' actual duties and responsibilities satisfy any  
25 one of the three criteria set out above. Town of Bolton, 25 MLC 62, 66, MCR-4562  
26 (September 10, 1998). The CERB traditionally applies all statutory exclusions from

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<sup>14</sup> The CERB's jurisdiction is not contested.



1 collective bargaining narrowly, so as not to deprive employees of the right to bargain  
2 collectively through representatives of their own choosing. Framingham Housing  
3 Authority, 42 MLC 340, 344, WMAM-16-5045 (June 28, 2016).

4 Confidential Employees

5 Section 1 of the Law designates employees as confidential “only if they directly  
6 assist and act in a confidential capacity to a person or persons otherwise excluded from  
7 coverage under this chapter.” The CERB has construed this statutory language to  
8 exclude those persons who have a direct and substantial relationship with an excluded  
9 employee that creates a legitimate expectation of confidentiality in their routine and  
10 recurrent dealings. Framingham Public Schools, 17 MLC 1233, 1236, CAS-2838  
11 (September 4, 1990). Employees who have “significant access or exposure to  
12 confidential information concerning labor relations matters, management’s position on  
13 personnel matters, or advance knowledge of the employer’s collective bargaining  
14 proposals are excluded as confidential.” City of Everett, 27 MLC 147, 150, MCR-4824  
15 (May 23, 2001). The CERB has construed exceptions to the definition of employee  
16 narrowly to limit the number of employees who can be excluded from collective bargaining  
17 while not unduly hampering an employer’s ability to manage the operation of the  
18 enterprise. Framingham Public Schools, 17 MLC at 1236.

19 *Office and Operations Manager*

20 The City argues that the Office and Operations Manager is an exempt managerial  
21 employee under the Law. In support of this contention, the City relies mainly on the  
22 position job description, which states that the Office and Operations Manager is an  
23 “integral part of the team, who will primarily support purchasing and procurement,

1 personnel related functions, fleet van/transportation coordination and management,  
2 equipment maintenance and management, IT inquiries, vendor management” and that  
3 the position provides “direct supervision of staff, interns, volunteers, contractors, etc.”<sup>15</sup>

4 We disagree that these statements standing alone render the Office and  
5 Operations Managerial a managerial employee. Even if the Executive Director includes  
6 the Office and Operations Manager in team meetings, there is no evidence that the Office  
7 and Operations Manager plays any role in formulating or determining policy that is of  
8 major importance to the City. To the contrary, the evidence demonstrates that when the  
9 Executive Director is considering policy changes she would consult with the Deputy  
10 Director. Similarly, even if the Office and Operations Manager had any supervisory  
11 authority (and the organization chart shows that it does not), the exercise of supervisory  
12 authority, without more, does not make an individual “managerial” within the meaning of  
13 the Law. Worcester School Committee, 3 MLC 1653, 1672, MUP-2044 (April 29, 1977).

14 Ultimately, both the testimonial and documentary evidence show that the Office  
15 and Operations Manager has no responsibility for labor relations matters, does not  
16 participate in interviews for new hires, does not have independent authority to make hiring

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<sup>15</sup> The City asserts that at the time of the hearing, the current Executive Director had only worked at OYEO for a week. As such, the City contends that the record has insufficient work history, and the CERB should view the organizational chart and job description as instructive when assessing the nature of the Office and Operations Manager’s interactions with the Director. Although the current Executive Director has only worked at the OYEO for a short period of time, the position of Office and Operations Manager has existed for many years and the incumbent at the time of the hearing had been in the position for over nine years and testified at the hearing. Furthermore, the Deputy Director of OYEO, who at the time of hearing had 10 years of experience in her position, also testified. As summarized above, neither witness provided testimony showing that the Office and Operations Manager’s duties satisfied any of the three criteria for being a managerial employee.

1 or firing decisions in the OYEO, and does not grant leave requests or discipline OYEO  
2 employees. As such, there is no evidence that the Office and Operations Manager  
3 satisfies any one of the three criteria for a managerial employee.

4         There is also no evidence that the Office and Operations Manager is a confidential  
5 employee. There is no evidence that he has access or exposure to confidential  
6 information concerning labor relations matters, management's position on personnel  
7 matters, or advance knowledge of the employer's collective bargaining proposals.  
8 Although the Office and Operations Manager has some payroll and budget duties, it is  
9 well-established that mere access to sensitive financial data, personnel records, or similar  
10 non-labor relations material does not make an individual a confidential employee. Town  
11 of Wareham, 36 MLC 76, 79, WMAM-08-1017 (October 28, 2009). Further, although the  
12 Employer speculates that the Office and Operations Manager will assume confidential  
13 labor relations duties at some future date, it is undisputed that he has none now. The  
14 CERB decides appropriate unit placement based on actual, not potential job duties. Town  
15 of Chelmsford, 27 MLC 41, 43, CAS-3394 (November 6, 2000). As such, we conclude  
16 that the Office and Operations Manager is not a confidential employee within the meaning  
17 of Section 1 of the Law.<sup>16</sup>

18         *Data, Research & Evaluation Manager*

19         The City contends that Data, Research & Evaluation Manager is a managerial  
20 employee because the position's core function is to create, analyze and evaluate data  
21 that is utilized in the policy-making process. The City argues that the Data, Research &

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<sup>16</sup> If the duties of this position change, the City may file a clarification petition to exclude the position from the unit.

1 Evaluation Manager is integral to how the OYEO informs policies for regarding youth  
2 development. We disagree. Although the Data, Research and Evaluation Manager may  
3 collect data to use in making policy decisions, there is no evidence that the data collection  
4 and analysis duties also involve creating or formulating important City policies.

5 Beyond that, is no evidence that the Data, Research and Evaluation Manager  
6 assists to a substantial degree in the preparation for or the conduct of collective  
7 bargaining on behalf of a public employer, or has a substantial responsibility involving the  
8 exercise of independent judgment of an appellate responsibility not initially in effect, in  
9 the administration of a collective bargaining agreement or in personnel administration.  
10 For these reasons, we conclude that the Data, Research & Evaluation Manager is not a  
11 managerial employee within the meaning of Section 1 of the Law.

12 We also conclude that the Data, Research and Evaluation Manager is not a  
13 confidential employee. Similar to the arguments it makes regarding managerial status,  
14 the City asserts that the Data, Research & Evaluation Manager contributes to discussions  
15 on the efficiency of youth programs, and the decisions that result from her data analysis  
16 shape policy, practices, and budget. However, there is no evidence that, as part of her  
17 role in collecting or assessing data and/or participating in discussions, the Data, Research  
18 and Evaluation Manager is routinely and regularly exposed to confidential information that  
19 would render her a confidential employee. The fact that the data she collects and analyzes  
20 may be helpful in shaping policy does not change this result. An employee can directly  
21 assist excluded employees without assisting them in a confidential capacity. Nauset  
22 Regional School District Committee, 6 MLC 1293, 1294, MCR-2707 (July 13, 1979).  
23 Therefore, absent evidence that the Data, Research & Evaluation Manager has significant

1 access or exposure to confidential information concerning labor relations matters,  
2 management's position on personnel matters, or advance knowledge of the employer's  
3 collective bargaining proposals, we conclude that the Data, Research & Evaluation  
4 Manager is not a confidential employee within the meaning of Section 1 of the Law.

#### 5 Appropriateness of Unit

6 Having determined that the Data, Research and Evaluation Manager and the  
7 Office and Operations Manager are not managerial or confidential employees, we turn to  
8 whether the OYEO employees should be represented in a separate unit, as the Employer  
9 argues,<sup>17</sup> or should be added to SENA's existing unit via an add-on election.

10 Section 3 of the Law requires the CERB to determine appropriate bargaining units  
11 that provide for stable and continuing labor relations. In determining whether a bargaining  
12 unit is appropriate, the CERB must consider three factors: 1) community of interest; 2)  
13 efficiency of operation and effective dealings; and 3) safeguarding the rights to effective  
14 representation. City of Everett, 27 MLC 147, 150-151, MCR-4824 (May 23, 2001). In  
15 considering whether a petitioned-for bargaining unit is an appropriate bargaining unit, we  
16 will not reject the proposed bargaining unit because it is not the only appropriate unit or  
17 because there is an alternative unit that is more appropriate. Town of Falmouth, 27 MLC  
18 27, 30, CAS-3319, MCR-4696 (September 18, 2000).

#### 19 Community of Interest

20 We turn first to the City's argument that the OYEO employees do not share a  
21 community of interest with other SENA employees because they work within a separate

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<sup>17</sup> Beyond its objections to the two positions discussed above, the City does not argue that the OYEO employees do not share a community of interest among themselves.

1 department that does not have much interaction with other SENA members. In deciding  
2 whether employees share a community of interest, the CERB examines factors like  
3 similarity of skills and functions, similarity of pay and working conditions, common  
4 supervision, work contact, and similarity of training and experience. Princeton Light  
5 Department, 28 MLC 46, 48, MCR-4803 (June 29, 2001) (citing Boston School  
6 Committee, 12 MLC 1175, 1196, CAS-2598 (August 30,1985)). No single factor is  
7 outcome determinative. City of Springfield, 24 MLC 50, 54, MCR-4602 (January 15, 1998)  
8 (citing City of Worcester, 5 MLC 1108, 1111, MCR-2632, 2633, 2685-2688 (June 30,  
9 1978)). The Law requires that employees share only a community of interest rather than  
10 an identity of interest. City of Springfield, 24 MLC at 54.

11 Here, we find that the OYEO employees share a community of interest with many  
12 employees in SENA's existing citywide bargaining unit. It is undisputed that OYEO  
13 employees and SENA bargaining unit members: 1) receive the same vacation and sick  
14 leave allotments; 2) are paid biweekly, have similar pay scales and receive annual step  
15 increases, and 3) require Boston residency at hire. Some OYEO employees, like some  
16 SENA bargaining unit members, supervise other staff and have similar educational and  
17 experience requirements. OYEO employees and SENA bargaining unit members perform  
18 similar job functions and more specifically, both groups have employees who perform  
19 community outreach in the course of their job duties who work directly with the youth  
20 community, perform budget work and grants management, and have procurement,  
21 payroll, and other financial responsibilities.

22 Despite these strong similarities, the City contends that the OYEO is a largely  
23 independent department that does not have interaction with the other SENA unit

1 members. Additionally, the City asserts that the OYEO has a different mission and  
2 reporting structure than other departments in the citywide unit. As set forth above  
3 however, OYEO employees do interact with BCYF employees, some of whom are SENA  
4 members. Moreover, as reflected in the recognition clause of its most recent CBA,  
5 SENA's unit is already comprised of positions from a multitude of diverse departments  
6 throughout the City that most likely have unique missions and structures. Accordingly,  
7 the fact that OYEO may have a different mission and structure from other City  
8 departments does not mean that its employees do not share a community of interest with  
9 SENA employees from similarly diverse departments. We therefore conclude that the  
10 petitioned-for employees share a community of interest with the employees in SENA's  
11 bargaining unit.

#### 12 Separate Unit

13 To satisfy the second and third criteria for determining appropriate bargaining units  
14 under Section 3, the CERB considers the impact of the proposed bargaining unit structure  
15 upon a public employer's ability to effectively and efficiently deliver public services while  
16 safeguarding the rights of employees to effective representation. Peabody School  
17 Committee, 27 MLC 7, 8, MCR-4757 (August 14, 2000). The CERB satisfies these  
18 obligations by placing employees with common interests in the same bargaining unit. Id.  
19 This avoids the proliferation of units that places an unnecessary burden on the employer.  
20 Town of Bolton, 25 MLC at 66.

21 Although the City argues that a stand-alone bargaining unit of the OYEO  
22 employees would not impair the efficiency of the City's operations, the CERB also has  
23 recognized the importance of maximizing the collective strength of employees in the

1 bargaining relationship. Franklin County Sheriff's Department, 38 MLC 317, 323, SCR-  
2 12-1511 (June 6, 2012); The CERB's preference for broad comprehensive units is  
3 balanced by its concern that a unit should not include employees so diverse as to produce  
4 inevitable conflicts in the collective bargaining process. University of Massachusetts, 4  
5 MLC 1384, 1392, SCR-2020 (October 18, 1977). However, only significant differences  
6 that would result in inevitable conflicts between employees would require the CERB to  
7 find that the employees lack a community of interest with other bargaining unit members.  
8 Franklin County Sheriff's Department, 38 MLC at 323 (and cases cited therein).

9         Where it is clear that the petitioned-for employees share a community of interest  
10 with an existing unit, the CERB will generally dismiss a petition for a separate unit if there  
11 is insufficient evidence to conclude that that the petitioned-for employees have a distinct  
12 community of interest from employees in the existing unit. Pittsfield School Committee,  
13 12 MLC 1487, 1493-1495 MCR-3486 (December 31, 1985) (citing Walpole School  
14 Committee, 12 MLC 1015, 1018, MCR-3499 (June 19, 1985). Here, for the reasons set  
15 forth above, we find no basis to conclude that the OYEO employees share a distinct  
16 community from interest from other SENA employees that would warrant creating a  
17 separate unit.

18         The City makes three arguments as to why the CERB should order an election in  
19 a stand-alone unit, including that: 1) SENA's existing unit has only been modified by the  
20 parties' agreement to do so; 2) OYEO is not one of the departments listed in the parties'  
21 recognition clause; and 3) SENA has not been permitted to accrete positions to its unit.

22         Regarding bargaining history, we reject the City's argument that the parties' prior  
23 agreements to bargain in separate department-wide units deprives the Union of its right



1 to petition the CERB for an add-on election or the CERB of its authority to order one. The  
2 Law gives the CERB discretion over the scope and definition of an appropriate bargaining  
3 unit and neither lawful recognition nor stipulations by the parties as to an appropriate  
4 bargaining structure binds the CERB or other parties in future cases where the existing  
5 unit structure is disputed and the issues are litigated for CERB determination. Town of  
6 Greenfield,<sup>32</sup> MLC 133, MUP-04-4178, CAS-04-3588 (February 8, 2006); City of  
7 Springfield, 24 MLC at 54; City of Worcester, 11 MLC 1363, 1365, MCR-3475, CAS-2597  
8 (January 23, 1985)<sup>18</sup>.

9       Regarding the recognition clause, although the CERB has determined that a union  
10 may waive its right to represent certain employees, its agreement to do so must be  
11 explicit. Wellesley School Committee, 40 MLC 274, 278, MCR-13-3091 (March 28, 2014).  
12 MBTA, 36 MLC 21, 23-24, WMAP-08-1001(October 28, 2009). Here, there is no evidence  
13 that SENA and the City ever expressly agreed to exclude employees who work in the  
14 OYEO from the scope of its unit and/or that SENA agreed that it would never seek to  
15 represent them. We therefore decline to infer such an agreement solely based on a  
16 recognition clause that does not mention the OYEO. Wellesley School Committee, 40  
17 MLC at 278.

18       Finally, even if the City's cursory claim that SENA "has not been permitted to  
19 accrete positions" is accurate,<sup>19</sup> in the one published CAS decision we found involving

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<sup>18</sup> As discussed above, in MCR-4126, citing Section 3 of the Law, a hearing officer rejected the parties' consent agreement for a department-wide unit and ordered an add-on election instead. See City of Boston, 19 MLC 1039, MCR-4126 (H.O. July 3, 1992). The parties subsequently entered into a consent agreement for an add-on election, which the CERB approved.

<sup>19</sup> The City did not cite any case law for this statement.

1 SENA's citywide unit, City of Boston, 35 MLC 137, 150, CAS-07-3669 (December 31,  
2 2008), the CERB declined to accrete an administrative assistant position to SENA's unit  
3 based on its fact-intensive determination that the disputed position shared a greater  
4 community of interest with AFSCME's unit than with SENA's. The facts of this case are  
5 very different and provide no basis to deny the Union's petition.<sup>20</sup>

#### 6 Add-on Election

7 We thus turn to whether SENA's petition meets all the criteria for an add-on  
8 election. The CERB may order an add-on election if: 1) the representation petition is  
9 accompanied by a sufficient showing of interest; 2) there is a sufficient community of  
10 interest between the employees in the disputed title and the employees in the existing  
11 unit; 3) the petition seeks to include all employees in the disputed titles; and 4) the reasons  
12 for the original exclusion no longer exist. University of Massachusetts, Amherst, 41 MLC  
13 233, 242, SCR-14-3687 (February 20, 2015). Because the Union filed a sufficient  
14 showing of interest in support of its petition in the instant case, and because we have  
15 found that there is a sufficient community of interest between SENA's unit and employees  
16 SENA seeks to add to the unit, the Union has satisfied the first and second prongs of this  
17 test.

18 The Union has also satisfied the third requirement for an add-on election because  
19 its petition sought to include all employees in the disputed titles. Finally, the Union has

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<sup>20</sup> We note that in Boston Public Health Commission, 39 MLC 218, CAS-11-1091, CAS-11-1092 (February 28, 2013), the CERB granted in part and denied in part SENA's petition to accrete 15 different positions to the unit of employees it represents at the Boston Public Health Commission. Although factually distinguishable, that decision clearly demonstrates that the CERB's CAS determinations are made on a case-by-case, fact-specific basis.

1 satisfied the fourth requirement for an add-on election because the OYEO did not exist at  
2 the time the existing citywide unit was certified. As such, there is no basis to continue to  
3 exclude this group of employees from the bargaining unit they are petitioning to join.

#### 4 CONCLUSION

5 Based on the record and for the reasons stated above, we conclude that the  
6 requirements for an add-on election have been met. Therefore, we order an add-on  
7 election to be held so that all the petitioned-for employees in the OYEO, including the  
8 Office and Operations Manager, and the Data, Research & Evaluation Manager, may  
9 decide whether or not they wish to be included in the Union's citywide bargaining unit.

#### 10 DIRECTION OF ELECTION

11 Based on the record, we conclude that a question of representation has arisen  
12 concerning the employees of Office of Youth Employment and Opportunity who are  
13 employed by the City of Boston. The unit appropriate for the purpose of collective  
14 bargaining consists of SENA's existing citywide bargaining unit, which includes  
15 supervisory and administrative positions throughout the City of Boston, as defined by the  
16 parties' collective bargaining agreement.

17 IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to  
18 determine whether a majority of the employees of the Office of Youth Employment and  
19 Opportunity in the City of Boston desire to be included in the existing citywide bargaining  
20 unit currently represented by SENA or whether they wish to be represented by no  
21 employee organization. The eligible voters shall include the employees of the Office of  
22 Youth Employment and Opportunity in the City of Boston employed in the following  
23 positions: Office & Operations Manager, Data, Research & Evaluation Manager, Grant &

1 Budget Manager, Senior Manager of Workforce & Career Readiness, Senior Manager of  
2 Engagement & Outreach, Employment & Payroll Coordinator, Youth & Career  
3 Development Coordinator, Strategic Partnerships & Engagement Manager, Outreach,  
4 Recruitment & Communications Coordinator, Senior Manager of Employment, Payroll, &  
5 Development, whose names appear on the City of Boston's payroll for the payroll period  
6 for the week ending the Saturday preceding the date of this decision, and who have not  
7 since quit or been discharged for cause.

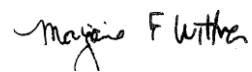
8 To assure that all eligible voters will have the opportunity to be informed of their  
9 statutory right to vote, SENA should have access to a list of voters and their addresses which  
10 may be used to communicate with them.

11 Accordingly, IT IS HEREBY FURTHER DIRECTED that the City of Boston will file an  
12 alphabetized election eligibility list, in a Word document or an Excel spread sheet,  
13 containing the names and addresses of all eligible voters, with the DLR no later than  
14 fourteen days from the date of this decision. The list must be filed electronically and sent to  
15 [EFileDLR@mass.gov](mailto:EFileDLR@mass.gov).

16 The DLR shall make the list available to all parties to the election. Failure to submit  
17 the list in a timely manner may result in substantial prejudice to the rights of the employees  
18 and the parties, therefore, no extension of time for filing the list will be granted except  
19 under extraordinary circumstances. Failure to comply with this direction may be  
20 grounds for setting aside the election should proper and timely objections be filed.

21  
22 SO ORDERED.

COMMONWEALTH EMPLOYMENT  
RELATIONS BOARD



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MARJORIE F. WITTNER, CHAIR



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KELLY B. STRONG, CERB MEMBER



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VICTORIA B. CALDWELL, CERB MEMBER