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DEPARTMENT OF LABOR RELATIONS

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April 5, 2024

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City of Boston
Office of Labor Relations
Boston City Hall, Room 624
1 City Hall Square
Boston, MA 02201

Re: WMAM-23-9795, City of Boston and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC

Dear Mr.  and Mr. Gordon O'Connell:

On January 10, 2023, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (Union) filed a Written Majority Authorization (WMA) petition with the Department of Labor Relations (DLR) pursuant to M.G.L. 150E, Section 1 (the Law) and DLR Regulation 456 CMR 14.19 seeking to represent a bargaining unit of 29 employees¹ employed by the City of Boston (City) in its Environment Department and Office of Historic Preservation. Pursuant to 456 CMR 14.19(6) and the parties' agreement, the DLR

¹ The Union initially petitioned for a unit of 27 employees. The City submitted employee lists including 29 total employees. During the verification process, the Union clarified that it was petitioning for a unit of 29 employees. Further, the parties agreed to exclude the positions of Director of Energy and Policy Programs, Special Assistant to the Commissioner (Environment), and the eliminated Deputy Director of Climate and Environmental Planning.

became the Neutral in this case. In support of its WMA petition for a unit of 29 employees, the Union submitted 18 valid written majority authorization cards (cards).

On February 10, 2023, the City raised challenges to the petition. First, the City challenged the validity of the written majority evidence submitted by the Union speculating that the Union submitted cards from individuals not properly included on the employee list to support its petition. Second, the City challenged the appropriateness of the petitioned-for unit citing the Union's proposed inclusion of professionals and non-professionals in the unit, the inclusion of supervisory employees and their direct reports in the unit, and a lack of community of interest among the titles included in the unit. Finally, the City challenged the inclusion of five employees in the unit, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], contending that they are exempt from coverage as public employees under the Law as either managerial or confidential employees. On February 17, 2023, the Union filed a response disputing the City's challenges.

Pursuant to 456 CMR 14.19(10), I find that the City's challenges are outcome determinative as they apply to all of the employees in the petitioned-for unit. In accordance with 456 CMR 14.19(10), I have investigated and resolved the above-referenced challenges.

CHALLENGES

Pursuant to 456 CMR 14.19(10), the City, as the party who raised the challenges, bears the burden of proving the validity of the challenges.

1. Validity of Majority Authorization Evidence

The City challenged the validity of the written majority authorization evidence submitted by the Union noting that employees in petitioned-for positions had left their positions prior to the filing of the petition.

Dismissal of Validity Challenge

The sufficiency of the written majority authorization evidence is an administrative determination. The DLR does not consider evidence submitted by employees who are not included on the employee list. See 456 CMR 14.19(10). The DLR has inspected and validated the authorization cards submitted in this matter and has determined that there are 18 valid authorization cards. Accordingly, the City has failed to prove a challenge to the validity of the written majority authorization evidence and I dismiss the City's challenge.

2. Appropriateness Of The Petitioned-For Unit

The City challenged the appropriateness of the petitioned-for unit on multiple grounds. First, the City challenged the inclusion of professionals and non-professionals

in the unit. Second, the City objected to the inclusion of supervisory employees and their direct reports in the unit. Finally, the City contended that the petitioned-for unit was inappropriate because the titles in the unit lacked a community of interest. As described in detail below, the City has failed to prove its challenges to the appropriateness of the unit.

A. Inclusion of Professionals And Non-Professionals

First, the City challenged the appropriateness of the petitioned-for unit because it includes non-professional employees and professional employees like architects and archaeologists. The City cited the requirements of M.G.L. 150E, Section 3 related to the inclusion of professional and non-professional employees in the same unit. The Union responded arguing that it satisfied the requirements of the Law by submitting cards, indicating the professional employees' desire to be represented in a unit containing non-professionals, from a majority of the professional employees in the petitioned-for unit.

Dismissal of Professional and Non-Professional Challenge

Pursuant to M.G.L. 150E, Section 3, a unit shall not include professional and non-professional employees unless a majority of the professional employees vote for inclusion in the unit. When a petitioned-for unit consists of both professional and non-professional employees, the DLR requires all professional employees to include an additional statement that they agree to be included in a collective bargaining unit consisting of both professional and nonprofessional employees. 456 CMR 14.19(3).

Apart from pointing out the requirements governing the inclusion of non-professional and professional employees in the same unit, the City offered no evidence demonstrating that the Union somehow failed to satisfy the obligations of 456 CMR 14.19(3) and M.G.L. 150E, Section 3. Pursuant to 456 CMR 14.19(10), the Neutral determines whether a majority of the employees on the employee list have submitted valid written majority authorization evidence. Here, as confirmed during the Neutral's verification process, the Union has submitted valid written majority authorization evidence for a majority of the professional employees on the employee list. Further, the Union's authorization cards in support of its petition properly include a statement that the professional employees agree to be included in a unit with non-professional employees. Therefore, I dismiss the City's challenge to the inclusion of both professional and non-professional employees in the unit.

B. Inclusion Of Supervisors In Petitioned-For Unit

The City challenged the appropriateness of the petitioned-for unit because it includes both supervisors and their direct reports. The City pointed out that [REDACTED], Director of Design Review, supervises [REDACTED], [REDACTED], Senior Preservation Planner, and [REDACTED], Preservation Planner. The City also contended that [REDACTED], Director of Archaeology/City Archaeologist, supervises archaeologists including [REDACTED] and [REDACTED].

For its part, the Union argued that the creation of separate supervisory units is a case-by-case policy determination and is not always required particularly where it would fragment an already small unit. The Union further contended that the City has failed to provide evidence showing that the supervisory structure somehow conflicts with a combined bargaining unit. The Union noted that an existing City-wide bargaining unit includes a large number of supervisors and their supervisees.

Dismissal of Supervisory Challenge

I dismiss the City's challenge to the inclusion of the Director of Design Review and the Director of Archaeology/City Archaeologist as supervisory employees. Historically, the Board has established separate bargaining units for supervisors and the employees whom they supervise, believing that employees who possess significant supervisory authority owe their allegiance to their employer, especially with respect to issues involving employee discipline and productivity. Town of Wareham, 36 MLC 76, WMAM-08-1017 (October 28, 2009) (citing Town of Bolton, 25 MLC 62, 67, MCR-4562 (1998)).

To determine whether an employee is a supervisor, the CERB distinguishes between a true supervisor and an employee who possesses more limited supervisory authority. In determining whether an employee is a true supervisor, and thus should be excluded from a unit including subordinate employees, the CERB considers factors such as whether the employee has the independent authority and judgment to assign and to direct the work of employees, Worcester School Committee, 22 MLC 1762, 1766, MCR-4429 (May 28, 1996); City of Westfield, 7 MLC 1245, 1252; MCR-2912 (August 28, 1980); the authority to initiate and to recommend discipline, Worcester School Committee, 22 MLC 1762, 1766, MCR-4429 (May 28, 1996); the authority to adjust grievances; Eastham School Committee, 22 MLC 1190, 1197, MCR-4345 (September 22, 1995); and the independent authority to make, or the power to recommend effectively, personnel decisions about whether to hire, to transfer, to suspend, to promote or to discharge employees. Greater New Bedford Regional Vocational School Committee, 15 MLC 1040, 1045, MCR-3769 (July 13, 1980).

Here, the City has asserted only that the Director of Design Review and the Director of Archaeology/City Archaeologist supervise other employees within the petitioned-for unit without providing any details as to the scope of that supervision. In doing so, the City has failed to demonstrate that the Director of Design Review and the Director of Archaeology/City Archaeologist meet any of the above-described criteria of true supervisors recommending their placement in a separate bargaining unit.

Even if I were to agree with the City that the Director of Design Review and the Director of Archaeology/City Archaeologist have significant supervisory authority, I would still dismiss the challenge. The creation of a separate supervisory unit is not a statutory mandate, but a policy determination. Town of Wareham, 36 MLC 76, WMAM-08-1017 (October 28, 2009) (citing City of Boston, 38 MLC 157, MCR-06-5205 (September 9,

2009)). It is within the DLR's discretion to decline to carve out two alleged supervisors from a petitioned-for bargaining unit.

C. Unit Scope

Further, the City challenged the appropriateness of the unit contending that the titles in the petitioned-for unit lack a community of interest. The City noted that the Office of Historic Preservation and the Environment Department are separate departments under the Cabinet of Environment, Energy and Open Space. The Department Head position for the Office of Historic Preservation is vacant leaving Cabinet Chief Mariama White-Hammond to act as Department Head. Alison Brizius is the Department Head for the Environment Department. The City argued that the two departments have different functions with the Office of Historic Preservation focusing on preserving the City's landmarks and history and with the Environment Department concentrating on the City's climate change plans.

The Union argues that the City has failed to present evidence demonstrating that employees in the petitioned-for unit lack a community of interest. Both the Office of Historic Preservation and the Environment Department fall under the purview of the Cabinet Chief of Environment, Energy and Open Space thereby sharing common supervision. Employees in both the Office of Historic Preservation and the Environment Department are served by the same human resource (HR) officials, are paid on the same salary scale, have the same benefits, and have similar levels of education, training, and experience.

Dismissal of Unit Scope Challenge

The DLR has broad discretion in determining appropriate bargaining units. If a petition describes an appropriate unit, the DLR will not reject it because it is not the most appropriate unit, or because there is an alternative unit that is more appropriate. Town of Wakefield, 28 MLC 290, 295, MCR-01-4922 (March 27, 2002). I dismiss the City's challenge to the scope of the petitioned-for unit where the City has failed to meet its burden to show that the unit is not appropriate under the Law due to a lack of community of interest among the titles in the unit.

Section 3 of the Law requires the CERB to determine appropriate bargaining units consistent with the fundamental purpose of providing for stable and continuing labor relations, while giving due regard to the following statutory criteria: 1) community of interest; 2) efficiency of operations and effective dealings; and, 3) safeguarding the rights of employees to effective representation. Town of Wakefield, 28 MLC 290, 295, MCR-01-4922 (March 27, 2002).

To determine whether employees share a community of interest, the Commission considers factors like similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact and similarity of training and experience. Town of Wakefield, 28 MLC 290, 295, MCR-01-4922 (March 27, 2002) (citing Town of

Bolton, 25 MLC 62, 65, MCR-4562 (1998)). No single factor is outcome determinative. Town of Wakefield, 28 MLC 290, 295, MCR-01-4922 (March 27, 2002) (citing City of Worcester, 5 MLC 1108, 1111 (1978)).

Under the second and third statutory criteria, the CERB considers the impact of the proposed bargaining unit structure upon the employer's ability to effectively and efficiently deliver public services, while safeguarding the rights of employees to effective representation. Town of Wakefield, 28 MLC 290, 295, MCR-01-4922 (March 27, 2002). The CERB complies with these directives by placing employees with common interests in the same bargaining unit, thus avoiding the proliferation of units that place an unnecessary burden on the employer, while maximizing the collective strength of employees in the bargaining relationship. Town of Wakefield, 28 MLC 290, 295, MCR-01-4922 (March 27, 2002) (citing City of Springfield, 24 MLC 50, 54, MCR-4602 (1998)).

Here, the petitioned-for job titles share a community of interest based on common supervision, similarity of training and experience, and similarity of pay and working conditions. The Office of Historic Preservation and Environment Department share common supervision under the Cabinet Chief of Environment, Energy and Open Space. The petitioned-for employees are paid on the same salary scale, have the same benefits, have similar levels of education, training, and experience, and are served by the same HR officials.

The Law requires that employees share only a community of interest rather than an identity of interest. University of Massachusetts, Amherst, 41 MLC 233, SCR-14-3687 (February 20, 2015). In contending that the petitioned-for titles lack a community of interest, the City chiefly argues that the positions in the Office of Historic Preservation perform different functions from the positions in the Environment Department. Contrary to the City's stance, units limited to departments or other administrative units of an employer are usually too underinclusive to be appropriate. Worcester School Committee, 22 MLC 1762, 1766, MCR-4429 (May 28, 1996). The CERB has consistently followed a policy of creating the largest appropriate bargaining unit practical, and it crafts broad, comprehensive units rather than smaller, fragmented ones. Worcester School Committee, 22 MLC 1762, 1766, MCR-4429 (May 28, 1996). As a result, disparate job functions and pay will likely exist in every bargaining unit that combines different job titles, and such units may often include different supervisory hierarchies. University of Massachusetts, Amherst, 41 MLC 233, SCR-14-3687 (February 20, 2015) (citing Town of Harwich, 1 MLC 1376, MCR-2035, (April 8, 1975)).

The City has offered no evidence demonstrating that the distinctions among the petitioned-for titles are so significant as to produce conflicts in the collective bargaining process due to differing job functions. University of Massachusetts, Amherst, 41 MLC 233, SCR-14-3687 (February 20, 2015). Moreover, the City has failed to offer any evidence demonstrating that the petitioned-for unit would negatively impact its ability to effectively and efficiently deliver public services. Accordingly, I dismiss the City's challenge to the scope of the unit.

3. Challenges To Managerial And/Or Confidential Positions

The City has challenged the inclusion of five employees in the petitioned-for unit contending that their positions are either managerial and/or confidential including [REDACTED], [REDACTED], Director of Administration and Finance; [REDACTED], Director of Design Review; [REDACTED], Archaeologist; [REDACTED], Grants Manager; and [REDACTED], Greenovate Communications Manager.

Managerial Employees

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

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

An employee is excluded from an appropriate bargaining unit as a managerial employee under Section 3 of the Law only if the employee’s actual duties and responsibilities satisfy any one of the above referenced three criteria. Town of Manchester-by-the-Sea, 24 MLC 76, 81, MCR-4511 (March 6, 1998); Town of Athol, 32 MLC 50, 52, CAS-04-3567 (June 29, 2005). The CERB traditionally applies all statutory exclusions from collective bargaining narrowly, so as not to deprive employees not otherwise managerial of the right to bargain collectively through representatives of their own choosing. Commonwealth of Massachusetts, 6 MLC 1026, 1028, CAS-2291 (May 7, 1979).

To be considered a managerial employee under the first part of the managerial test, the employee must make policy decisions and determine mission objectives. City of Boston, Boston Public Library, 37 MLC 1, 9, CAS-08-3727 (July 12, 2010) (citing Wellesley School Committee, 1 MLC 1389, 1401, MUP-2031 (February 27, 1975) aff’d sub nom. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112 (1978)). The policy decisions must be of major importance to the mission and objectives of the public employer. Town of Wareham, 36 MLC 76, WMAM-08-1017 (October 28, 2009) (citing Wellesley School Committee, 1 MLC 1389, 1403, MUP-2031 (February 27, 1975)). Neither limited participation in the decision-making process nor attendance and participation in policy-making discussions is sufficient to consider an employee managerial if the person’s input is merely informational or advisory in nature. Wellesley School Committee, 1 MLC at 1403. Rather, an employee must participate in the policy decision-making process on a regular basis, with the authority to select and implement a policy alternative, to satisfy this first criterion of a managerial employee. Town of Plainville, 18 MLC 1001, 1009, MCR-4019 (June 12, 1991).

This part of the analysis focuses on whether an employee possesses independent decision-making authority or whether the employee's decisions are screened by another layer of administration. Worcester School Committee, 3 MLC 1653, 1672 (1977).


To be considered a "managerial" employee under the second criterion, a person must participate to a substantial degree in the preparation for or conduct of collective bargaining. Identifying problem areas to be discussed during bargaining or mere consultation about bargaining proposals is insufficient to satisfy this second criterion. Rather, the employee must either participate in actual negotiations or be otherwise involved directly in the collective bargaining process by preparing bargaining proposals, determining bargaining strategy or objectives, or having a voice in the terms of settlement. Town of Manchester-by-the-Sea, 24 MLC at 81; Wellesley School Committee, 1 MLC at 1407.

In determining whether an employee satisfies the third criterion, the CERB construes independent judgment to require exercise of discretion without the need to consult with a higher authority." Wellesley School Committee, 1 MLC at 1408. "There must be more than the coincidence of a recommendation and acceptance by a higher authority." Id. Further, "the judgment exercised must be substantial, in that perfunctory denials and routine decisions are not considered 'substantial responsibility.'" Town of Agawam, 13 MLC 1364, 1369, MCR-3511 (December 24, 1986). Finally, the "appellate" authority must be exercised beyond the first step in a grievance-arbitration procedure. Wellesley School Committee, 1 MLC at 1408.

Confidential Employees

Section 1 of the Law defines an employee as "confidential" only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage. Any employee who has a direct and substantial relationship with an excluded employee that creates a legitimate expectation of confidentiality in their routine and recurrent dealings must be excluded. Town of Medway, 22 MLC 1261, 1269, MCR-4350, MCR-4352 (May 11, 1995) (citing Littleton School Committee, 4 MLC 1405, 1414, CAS-2000, MUP-2027 (October 27, 1977)); Town of Plainville, 18 MLC 1000, 1010, MCR-4019 (June 12, 1991). The exclusion has been narrowly interpreted to exclude as few employees as possible, while not unduly hindering the employer's operations. Silver Lake Regional School Committee, 1 MLC 1240, 1243, CAS-163 (January 13, 1975).

Therefore, only those employees who have significant access or exposure to confidential information concerning labor relations matters, management's position on personnel matters, or advance knowledge of the employer's collective bargaining proposals are excluded as confidential. Fall River School Committee, 27 MLC 37, 39, CAS-3363 (October 23, 2000).

- A.  **Director of Administration and Finance
(Environment Department)**

The City argues that [REDACTED] is a managerial and/or confidential employee. The City contends that [REDACTED] acts as the human resource (HR) person and office manager for the Environment Department managing the Department's HR processes and budget and supervising the administrative staff. The City contends that [REDACTED] is entrusted with information about, and has significant input and discretion over, budgets and personnel issues. The City argues that if the Environment Department was collectively organized, [REDACTED] would have significant input into labor issues including negotiation strategy and budget issues.

The Union maintains that the City has failed to meet its burden to prove that [REDACTED] is either managerial or confidential. The Union argues that mere participation in HR processes and access to personnel and/or budgetary information is insufficient to render an employee confidential or managerial. The Union contends that Roger's job description demonstrates that her involvement with the budget falls short of independent budget approval. The Union contends that it is unlikely that [REDACTED] will have significant input or control over future labor relations matters that are generally entrusted to the City's centralized Office of Human Resources and Office of Labor Relations.

Dismissal of Challenge to [REDACTED]

Based on the evidence provided, I do not find that the City has met its burden to prove that [REDACTED] is a managerial and/or confidential employee. Without providing any specific evidence, the City has asserted that [REDACTED] has information about and significant input and discretion over budgets and personnel issues. The City's conclusory assertion that [REDACTED] has input and discretion over budgets and personnel issues does not demonstrate managerial status with respect to policy-making where the City has failed to present evidence demonstrating that [REDACTED] possesses independent judgment to make policy decisions and to determine the City's objectives. See Town of Harwich, 35 MLC 188, WMAM-08-1011 (March 9, 2009). The City has failed to identify even a single specific policy formulated by [REDACTED] and has not demonstrated that [REDACTED] decisions are not screened by another layer of administration. University of Massachusetts, 46 MLC 121, CAS-17-6267 (December 27, 2019) (declining to find that a position was managerial where, in part, evidence failed to show that employee's decisions were not screened through another layer of administration); Town of Tyngsborough, 38 MLC 140, CAS-11-3762 (November 23, 2011) (rejecting claim that Town Accountant and Town Treasurer were managerial employees because they prepared financial analysis and assisted in preparing annual budget where there was no evidence that employees formulated fiscal policy and where Town failed to identify even a single fiscal policy formulated by employees); Town of Easton, 31 MLC 132, MCR-03-5064 (2005) (declining to exclude treasurer/collector as a managerial employee on the basis of policy-making responsibilities where treasurer/collectors duties included, in part, preparing annual report of financial activities, managing cash flow, supervising billing and collections, ensuring accuracy of financial information in personnel records, and preparing department and benefits budget).

The City further appears to contend that [REDACTED] will assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of the City should the Union's petition be successful. However, coverage under the Law is based on actual, not potential, duties and the CERB declines to exclude employees from coverage under the Law based solely on an employer's representation that an employee will perform duties at some future time. Town of Wareham, 36 MLC 76, WMAM-08-1017 (October 28, 2009) (citing City of Everett, 27 MLC 147, 150 (2001)). As such, potential future duties are insufficient to exclude [REDACTED] from coverage under the Law as a managerial employee.

To the extent that the City contends that [REDACTED] has substantial responsibility of an appellate authority not initially in effect in personnel administration, the City has failed to provide any details identifying any specific personnel matters over which [REDACTED] has discretion. The evidence, thus, fails to show that [REDACTED] has exercised substantial responsibility, rather than executing routine or perfunctory decisions, in personnel matters.

Finally, the City has failed to prove that [REDACTED] is a confidential employee on the basis of her access to budgetary and/or personnel information. Access to material considered sensitive by an employer such as budget information or personnel records, does not, without more, make an employee confidential. Board of Trustees of the University of Massachusetts, 37 MLC 67, CAS-08-3720 (October 1, 2010); Town of Harwich, 35 MLC 188, WMAM-08-1011 (March 9, 2009) (citing Fall River School Committee, 27 MLC 37, 39-40, CAS-3363 (October 23, 2000)). The City has failed to provide evidence identifying the specific nature of the budgetary and personnel information to which [REDACTED] has access. As such, I cannot conclude that [REDACTED] has significant access or exposure to confidential information concerning labor relations matters, management's position on personnel matters, or advance knowledge of collective bargaining proposals. See Fall River School Committee, 27 MLC 37, 40, CAS-3363 (October 23, 2000). Accordingly, I dismiss the City's challenge to [REDACTED].

B. [REDACTED], Director of Design Review (Environment Department)

The City argues that [REDACTED] is a managerial and/or confidential employee. The City contends that [REDACTED] participates to a substantial degree in formulating policy and exercises independent judgment on policy decisions of major importance to the mission and objectives of the City. [REDACTED] works with the Boston Landmarks Commission and supervises several positions. [REDACTED] sets priorities in budgeting. The City argues that if the Environment Department was collectively organized, [REDACTED] would be involved in labor and negotiation issues.

The Union argues that the City has failed to satisfy its burden to prove that [REDACTED] is either a managerial or confidential employee. The Union contends that [REDACTED]'s job description does not indicate that his position utilizes independent judgment in formulating

policy. The Union maintains that it is unlikely that [REDACTED] would have a substantial role in collective bargaining given that he supervises few employees.

Dismissal of Challenge to [REDACTED]

Based on the evidence provided, I do not find that the City has met its burden to prove that [REDACTED] is a managerial and/or confidential employee. First, the City asserts that [REDACTED] participates to a substantial degree in formulating or determining City policy. The City's bare assertion that [REDACTED] exercises independent judgment on policy matters does not demonstrate managerial status where the City has failed to present any specific evidence demonstrating that [REDACTED] makes substantial policy decisions not screened through another layer of administration. The City did not identify even a single specific policy or budgetary decision made by [REDACTED]. See Town of Harwich, 35 MLC 188, WMAM-08-1011 (March 9, 2009); University of Massachusetts, 46 MLC 121, CAS-17-6267 (December 27, 2019).

The City further appears to contend that [REDACTED] will assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of the City should the Union's petition be successful. As noted above, coverage under the Law is based on actual, not potential, duties and the CERB declines to exclude employees from coverage under the Law based solely on an employer's representation that an employee will perform duties at some future time. Town of Wareham, 36 MLC 76, WMAM-08-1017 (October 28, 2009) (citing City of Everett, 27 MLC 147, 150 (2001)). As such, potential future duties are insufficient to exclude [REDACTED] from coverage under the Law as a managerial employee.

Moreover, the City has failed to prove that [REDACTED] is a confidential employee. Access to material considered sensitive by an employer such as budget information or personnel records, does not, without more, make an employee confidential. Board of Trustees of the University of Massachusetts, 37 MLC 67, CAS-08-3720 (October 1, 2010); Town of Harwich, 35 MLC 188, WMAM-08-1011 (March 9, 2009) (citing Fall River School Committee, 27 MLC 37, 39-40, CAS-3363 (October 23, 2000)). The City has failed to provide evidence identifying the specific nature of the sensitive information to which [REDACTED] has access. As such, I cannot conclude that [REDACTED] has significant access or exposure to confidential information concerning labor relations matters or management's position on personnel matters. See Fall River School Committee, 27 MLC 37, 40, CAS-3363 (October 23, 2000).

C. [REDACTED] Archaeologist (Office of Historic Preservation)

The City argues that [REDACTED] is managerial and/or confidential employee. The City maintains that [REDACTED] participates to a substantial degree in formulating policy and exercises independent judgment on policy decisions of major importance to the mission and objectives of the City. [REDACTED] works with the Boston Landmarks Commission and supervises the City's archaeologists. [REDACTED] sets priorities in budgeting. The City argues

that if the Office of Historic Preservation were collectively organized, ██████ would be involved in labor and negotiation issues.

The Union contends that the City has failed to satisfy its burden to prove that ██████ is either a managerial or confidential employee. The Union contends that ██████'s job description fails to demonstrate any major policy-making responsibilities. The Union maintains that it is unlikely that ██████ would have a substantial role in collective bargaining given that he supervises few employees.

Dismissal of Challenge to ██████

I do not find that the City has met its burden to prove that ██████ is a managerial and/or confidential employee. First, the City asserts that ██████ participates to a substantial degree in formulating or determining City policy. The City's conclusory assertion that ██████ exercises independent judgment on policy decisions does not demonstrate managerial status. The City has failed to present any specific evidence demonstrating that ██████ makes substantial policy decisions not screened through another layer of administration. For instance, the City did not identify even a single specific policy or budgetary decision made by ██████ or provide evidence identifying the nature or scope of ██████'s participation in policy-making or budget setting. See Town of Harwich, 35 MLC 188, WMAM-08-1011 (March 9, 2009); University of Massachusetts, 46 MLC 121, CAS-17-6267 (December 27, 2019).

The City further appears to contend that ██████ will assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of the City should the Union's petition be successful. As noted above, coverage under the Law is based on actual, not potential, duties and the CERB declines to exclude employees from coverage under the Law based solely on an employer's representation that an employee will perform duties at some future time. Town of Wareham, 36 MLC 76, WMAM-08-1017 (October 28, 2009) (citing City of Everett, 27 MLC 147, 150 (2001)). As such, potential future duties are insufficient to exclude ██████ from coverage under the Law as a managerial employee.

Moreover, the City has failed to prove that ██████ is a confidential employee. Access to material considered sensitive by an employer such as budget information or personnel records, does not, without more, make an employee confidential. Board of Trustees of the University of Massachusetts, 37 MLC 67, CAS-08-3720 (October 1, 2010). The City has failed to provide evidence identifying the specific nature of the sensitive information to which ██████ has access. As such, I cannot conclude that ██████ has significant access or exposure to confidential information concerning labor relations matters or management's position on personnel matters rendering him exempt from coverage under the Law. See Fall River School Committee, 27 MLC 37, 40, CAS-3363 (October 23, 2000).

D. ██████████, Grants Manager (Environment Department)

The City contends that ██████████ may be exempt as managerial and/or confidential. ██████████'s functions include budget formulation and management. According to the City, ██████████ assists ██████████ with confidential personnel issues and has input into budgetary priorities for the Environment Department.

The Union argues that the City has failed to meet its burden to prove that ██████████ is either managerial or confidential. The Union counters that ██████████'s job description does not include budget formulation or personnel functions.

Dismissal of Challenge to ██████████

I dismiss the City's challenge to ██████████ where the City has failed to meet its burden to prove that ██████████ is a managerial or confidential employee. The City's mere assertion that ██████████ assists ██████████ with confidential personnel issues and has input into budgetary priorities does not demonstrate managerial status with respect to policy-making. Here, the City has failed to present evidence demonstrating that ██████████ possesses independent judgment to make substantial policy decisions and to determine the City's objectives. See Town of Harwich, 35 MLC 188, WMAM-08-1011 (March 9, 2009). The City has failed to identify even a single specific policy formulated by ██████████ and has not demonstrated that ██████████'s decisions are not screened by another layer of administration. University of Massachusetts, 46 MLC 121, CAS-17-6267 (December 27, 2019). To the extent that the City contends that ██████████ has substantial responsibility of an appellate authority not initially in effect in personnel administration, the City has failed to provide any details identifying any specific personnel matters over which ██████████ has discretion. The evidence, thus, fails to show that ██████████ has exercised substantial responsibility, rather than executing routine or perfunctory decisions, in personnel matters.

Further, the City has failed to prove that ██████████ is a confidential employee on the basis of her access to budgetary and/or personnel information. The City has failed to provide evidence identifying the specific nature of the budgetary and personnel information to which ██████████ has access. As such, I cannot conclude that ██████████ has significant access or exposure to confidential information concerning labor relations matters, management's position on personnel matters or advance knowledge of collective bargaining proposals. See Fall River School Committee, 27 MLC 37, 40, CAS-3363 (October 23, 2000). Access to sensitive financial data or records alone does not designate an employee as confidential; rather, it is an employee's advance knowledge of an employer's bargaining positions gleaned as a result of access to that data. Town of Harwich, 35 MLC 188, WMAM-08-1011 (March 9, 2009) (citing Fall River School Committee, 27 MLC 37, 39-40 (2000)).

**E. ██████████, Greenovate Communications Manager
(Environment Department)**

The City argues that [REDACTED] is exempt as a managerial employee. [REDACTED] formulates plans and goals to get the public to buy into the City's climate plans which are of major importance to the City. The Director of Communications provides final approval for the strategies and goals set by [REDACTED]. [REDACTED] participates in the policy decision-making process on a regular basis.

The Union counters that the City has failed to meet its burden to prove that [REDACTED] is exempt as managerial particularly where the City has admitted that [REDACTED] lacks independent authority to make policy decisions. The Union maintains that [REDACTED]'s job description contains no managerial duties.

Dismissal of Challenge to [REDACTED]

I dismiss the City's challenge to [REDACTED] where the City has failed to meet its burden to prove that [REDACTED] is a managerial employee. Although the City contends that [REDACTED] participates to a substantial degree in formulating or determining policy, the evidence provided shows that [REDACTED]'s decisions are screened by another layer of administration. University of Massachusetts, 46 MLC 121, CAS-17-6267 (December 27, 2019). The City admits that [REDACTED] does not exercise independent decision-making authority in policy setting by acknowledging that [REDACTED]'s recommendations are subject to the review of and must be approved by the Director of Communications. See Greater Lawrence Sanitary District, 34 MLC 87, MCR-06-5209 (March 4, 2008).

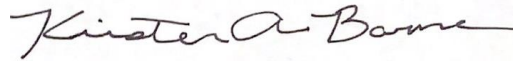
CONCLUSION

Based on the evidence and my conclusions above, the appropriate unit consists of 29 employees, and I find the following to be an appropriate bargaining unit:

All full-time and regular part-time professional and non-professional employees employed by the City of Boston in its Environment Department and Office of Historic Preservation including Administrative Assistant, Archaeologist/Director of Archaeology, Architect, Architectural Historian, Assistant Survey Director, BCCE Program Manager, Communications Manager, Conservation Assistant, Director of Administration & Finance, Director of Carbon Neutrality, Director of Design Review, Energy Advocate, Energy Analyst, Energy Manager, Environmental Assistant, Finance Manager, Lab Manager, Preservation Assistant, Preservation Planner, Program Manager, Program Assistant, Project Archaeologist, Project Manager, Public Archaeologist, and Senior Preservation Planner, but excluding Director of Communications and Engagement, Director of Landmarks Commission, Director of Municipal Energy Unit, Director of Recycling Programs, Energy Efficiency and Distributed Resource Finance Manager, Special Assistant to the Commissioner, Director of Energy and Policy Programs, and all other supervisors, managerial employees, confidential employees, and all other employees employed by the City of Boston.

The Union has submitted 18 valid written majority authorization cards including 13 cards from non-professional employees and 5 cards from professional employees. Therefore, it has established majority support for the appropriate 29 employee bargaining unit.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

A handwritten signature in black ink that reads "Kristen A. Barnes". The signature is written in a cursive style with a horizontal line extending from the end of the name.

KRISTEN BARNES, ESQ.
NEUTRAL