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**IN THE MATTER OF ARBITRATION BETWEEN**

**CITY OF CHELSEA**

**AND**

**UNITED STEELWORKERS, LOCAL 9427**

**(Deputy DPW Commissioner Position)**

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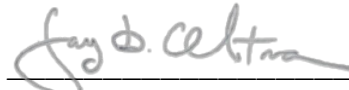
**AWARD OF THE ARBITRATOR**

The Undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered by the above named parties and having been duly sworn and having duly heard the proofs and allegations of the parties **AWARDS** as follows:

For the reasons set forth in the attached Decision, the Deputy DPW Commissioner position should be in the bargaining unit represented by the Union.

The position shall immediately be placed in the Union's bargaining unit. The parties shall meet to negotiate the classification of the position, except that in no event shall the then occupant of the position suffer any loss in pay.

June 1, 2023  
Brookline, Massachusetts

  
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Gary D. Altman

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**ARBITRATION DECISION**

**Introduction**

The City of Chelsea ("City") and the United Steelworkers, Local 9427 ("Union") are parties to a Collective Bargaining Agreement. In September, 2022, the parties entered into an agreement to submit to an independent arbitrator "the question of whether the position of DPW Deputy Public Works Commissioner should be in the Union," and further agreed "that the decision of the Arbitrator shall be final, and the parties waive all rights of appeal."

The parties presented their case in Arbitration in a virtual proceeding before Gary D. Altman, Esq., on April 5, 2023. The Union was represented by Patrick N. Bryant, Esq., and the City by Strephon Treadway, Esq. The parties had the opportunity to examine and cross-examine witnesses and to submit documentary evidence.

**Issue**

The parties agreed that the issue to be decided is as follows:

Should the Deputy DPW Commissioner position be in the USW bargaining unit?

## **Facts**

The Department of Public Works ("DPW") is the third largest department in the City of Chelsea, after the School and Police Departments. It is headed by the DPW Commissioner, who reports directly to the Deputy City Manager. Its employees are in three different bargaining units, represented by Local 888, SEIU; a Teamsters local; and this Union.

The Union's representational status dates to 1996, when the Labor Relations Commission (now the Department of Labor Relations) certified it as the bargaining representative of all full-time and regular part-time supervisory and administrative employees of the City (not including the Police, Fire and School Departments).<sup>1</sup> The LRC's certification includes the City Engineer/Assistant DPW Director, as well as some other high-level titles, such as City Clerk, Library Director, Health and Human Services Director I, and Assistant City Treasurer.

In the ensuing years, the parties negotiated many additional titles into the bargaining unit through the recognition clause of the CBA. One of these was Assistant Director of DPW. Currently, the bargaining unit includes the second highest ranking position in many City departments, and sometimes the highest as well.

In 2017, the City Engineer/Assistant Director of the DPW retired. The City then added a second Assistant Director position to the Department; designated one as the Assistant Director/Operations and the other as Assistant Director/Facilities & Administration; and wrote a new job description for each. The City hired Fidel Maltez as

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<sup>1</sup>The referenced "administrative" employees are non-clerical. The clerical employees are in SEIU's bargaining unit.

Assistant Director/Facilities & Administration and [REDACTED] [REDACTED] as Assistant Director/ Operations. The job description for Mammolette's position did not include City Engineer responsibilities, but there is no question that he acted in that capacity, most likely because he was the only licensed engineer on the DPW's staff, with bachelor's and master's degrees in civil engineering.

At the time [REDACTED] was hired, the City's Water, Sewer and Drains ("WSD") had been contracted out to R.H. White for well over twenty years. The City Manager assigned [REDACTED] to examine R.H. White's performance and determine whether it would be more cost-effective for the City to operate its WSD services directly. [REDACTED] was previously the General Manager of the Georgetown Water Department, which is most likely why the Town Manager chose him for this assignment.

[REDACTED] produced an analysis, including detailed spreadsheets, which advocated bringing the services in-house.<sup>2</sup> That conclusion, which was somewhat controversial, was the subject of extensive discussions among [REDACTED] the City Manager, and City Council. [REDACTED] explained his position at two or three City Council meetings, some or all of which were covered in the Chelsea Record. Eventually, City Council accepted Mammolette's recommendation, with some revisions. The City bought out the last two years of R.H. White's contract and funded a new WSD Division in the DPW. [REDACTED] wrote job descriptions for the staff of the new Division and played some part in hiring the new employees.

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<sup>2</sup> At some point, the City Manager also asked [REDACTED] to evaluate whether the City should bring trash collection in-house. In that instance, [REDACTED] came to the opposite conclusion, and trash collection remained in the hands of the contractor.

While the debate over the WSD services was ongoing, the DPW Director (the title at the time) left the City's employment. For reasons that do not appear in the record, the City changed the title of the position to DPW Commissioner, eliminated the two Assistant Director positions, and instituted a single Deputy Commissioner position. Maltez was promoted to Commissioner, and [REDACTED] became the Deputy Commissioner.

There was no evidence that Mammolette's day-to-day job duties changed after he became Deputy Commissioner. But from the outset, the City designated and treated the Deputy Commissioner position as a non-bargaining-unit "exempt" position on the City's management pay scale.<sup>3</sup> In the past, the parties have negotiated the removal of certain positions from the Union's bargaining unit, but they did not do so in this case.

The City does not dispute that there is not much difference between the job descriptions for Deputy Commissioner and the Assistant Directors. Much of the Deputy Commissioner job description is not just similar to its predecessors, but consists of a *verbatim* repetition of them, as the following comparison shows.<sup>4</sup> Deletions from the job description for Assistant Director/Operations are indicated by ~~strike through~~ and additions by underscore. All other material is common to both job descriptions.<sup>5</sup>

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<sup>3</sup>The salary range for the position was \$103,000 to \$138,000. The highest salary range on the Union's FY23 pay scale is \$96,911.19 to \$126,006.84.

<sup>4</sup> The two Assistant Director job descriptions had many duties in common. Many duties specific to the Assistant Director/Facilities & Administration were not carried forward to the Deputy Commissioner.

<sup>5</sup> To enable the comparison, the sequence of some portions of the job descriptions has been changed, indicated by \* \* \* asterisks.

**SUMMARY STATEMENT OF DUTIES**

Under the direction of the Commissioner of Public Works, the Deputy DPW Commissioner will assist with the development of department objectives, plans and goals; recommend a range of programs/services designed to support objectives and planning initiatives and to enhance the provision of quality services. The Deputy DPW Commissioner will assist the Commissioner of Public Works in developing and recommending department budget requests for review before the City Manager and City Council and work within approved budget in a manner consistent with City policies and procedures.

\* \* \*

Supervise department staff through subordinates; select, counsel and discipline staff, subject to City policies and procedures and labor contracts; evaluate staff and assist in recommending changes in status, including promotions.

\* \* \*

As directed, meet with the City Manager and other department heads to provide input to City-wide plans, programs and coordination of City services.

\* \* \*

The Deputy DPW Commissioner will oversee the senior staff of the water/sewer/drain (WSD) division of DPW. This includes the WSD Superintendent, the WSD Assistant Superintendent, and the WSD Compliance Manager. In the event that the position of WSD Superintendent is unfilled, the Deputy DPW Commissioner shall serve as the WSD Superintendent.

The Deputy DPW Commissioner will represent the City on the MWRA Advisory Board and its Executive Committee...

\* \* \*

The Deputy DPW Commissioner will represent the City on all matters dealing with Federal and State regulatory agencies ...

\* \* \*

Develop and maintain effective working relationships with municipal, county, state and federal officials and agencies to ensure compliance with all laws and regulations affecting the work of the department.

\* \* \*

Attend monthly Massachusetts Water Resources Advisory Board meetings and operations committee meetings as community representative.

\* \* \*

The Deputy DPW Commissioner will oversee the staff of the Engineering division of DPW. This includes the City Engineer, the Assistant City Engineer, and any supporting junior and/or field staff. In the event that the position of City Engineer is unfilled, the Deputy DPW Commissioner shall serve as the City Engineer.

## **ESSENTIAL JOB FUNCTIONS AND DUTIES**

### **Project Management**

- As directed by the Commissioner of Public Works, plan and schedule construction, repair and maintenance of city public projects, roads, sewers, water systems, other public works structures, cemeteries and natural resources.
- Set the overall direction of the WSD division of DPW. This includes standard operating procedures for improved system operations and maintenance (O&M), customer complaint resolution, regulatory compliance, etc.
- Improve water and sewer enterprise fund management...
- Review engineering aspects of all City projects, as necessary.
- Serve as an advisor and liaison in the coordination of activities with other City boards, commissions, and members of the community.
- Continuously investigate ways to improve the cost-effectiveness of DPW services, including consideration of contracted services vs. City staff/resources.

### **Capital Improvements**

- Initiate planning annual capital plan improvements for water distribution system, sanitary sewer and storm water collection systems, roadways and sidewalks.
- Provide high level oversight of capital plan improvements through design and construction.
- Oversee the takeback of WSD O&M from Contract Services. Develop and implement a transition plan for City staff/resources and a demobilization plan for Contract Operator.
- Work with ~~Chelsea Water and Sewer~~ DPW Engineering Division in review of water, sanitary sewer and storm sewer improvements related to both private development/redevelopment and capital plans.

- ~~Work with Chelsea Water and Sewer in operations and maintenance of of water distribution system, sanitary sewer and storm water collection systems. Review weekly and annual reports from Chelsea Water and Sewer.~~
- Oversee compliance with state and federal level regulatory compliance including storm water, combined sewer overflow, drinking water and sanitary sewer permitting and compliance.
- ~~Provide written review comments of~~ Provide oversight of DPW Engineering Division for review of site plans for development/redevelopment to Planning Board and Zoning Board of Appeals and Building Permits through the Inspectional Services Department.
- Provide oversight of DPW Engineering Division for ~~C~~ompilation of bid specifications for various activities including but not limited to grass cutting fleet management, vehicle maintenance and repair, street sweeping, infrastructure repair, roadway and sidewalk rehabilitation, purchase of trucks and equipment, street markings, traffic signal maintenance and emergency repair, regulatory and warning signs, disposal of special wastes, and water meter purchase and installation.

### **Management**

- Oversee contractors or subcontractors, where applicable, to ensure contract obligations are met.
- Assist in the staffing of ~~the City's Department of Public Works~~ all divisions.
- Plan, organize, and direct department activities through department supervisors and direct the work of subordinates through supervisory staff.
- Provide coaching, guidance, performance evaluation, training and discipline to staff as needed.
- As designated, may act on behalf of the Commissioner of Public Works in related DPW matters and concerns.
- As directed, meet with the City Manager and department heads to provide input to City-wide plans, programs and coordination of City services.
- As directed, represent the department at a variety of meetings both within and outside the City. ...
- Assist the Commissioner of Public Works in the formulation of policies and program objectives for the department's operation.



- Respond to inquiries from the general public and employees pertaining to departmental projects and policies.
- Communicate and assist in providing overall direction to other City departments regarding DPW matters.
- Work with the Commissioner of Public Works to assess department performance in relation to established goals and take appropriate actions to improve department's efficiency and services provided. ...

**Data Collection, Analysis and Reporting**

- Collect, analyze, and summarize data on an as-needed basis.
- Attend site visits in the City when required.
- Responsible for the preparation of regular written and verbal reports to brief City management and/or relevant boards and commissions.
- Work with the Auditor to maintain thorough and accurate reporting procedures and to expedite clear meaningful financial statements for DPW projects.

**Budget**

- Assist the Commissioner of Public Works in developing, recommending and overseeing department budget requests for review before the City Manager and City Council.
- Develop appropriate controls and work within approved budget in a manner consistent with City policies and procedures.

**Arborist Duties...**

As for qualifications, all three job descriptions require a bachelor's degree in civil engineering, but only the Deputy Commissioner position lists a civil engineer's license as "highly desirable."

In January, 2022, Maltez resigned, and [REDACTED] was promoted to Commissioner. [REDACTED] [REDACTED] the DPW's Business and Grants Manager, was promoted to Deputy Commissioner. As Commissioner, [REDACTED] continued to serve as City Engineer because of his engineering credentials. Like [REDACTED] before her, [REDACTED] had no role in collective bargaining.

██████████ resigned in October 2022, and ██████████ was promoted to Commissioner. In January, 2023, the City hired Chris Barrett as Deputy Commissioner. Barrett has an engineer's license and is the current City Engineer. He has begun revising Mammolette's long-term plan for the WSD Division.

**Relevant Contractual and Statutory Provisions**

**Article I - Persons Covered By This Agreement**

Section 1. Recognition. The City recognizes the Union as the exclusive representative for the purposes of collective bargaining relative to wages, hours and other conditions of employment for all employees in the service of the City as described in Appendix A.

\* \* \*

**Appendix A**

**UNITED STEELWORKERS LOCAL 9427  
FULL TIME AND REGULAR PART-TIME  
SUPERVISORY AND ADMINISTRATIVE POSITIONS**

- \* Financial Operations Manager/Treasurer/Collector
- \* Assistant City Collector
- \* Assistant City Treasurer Supervisor of Central Billing and Research Assistant Director of Assessing Appraiser 1
- \* City Clerk
- \* Assistant City Clerk
- \* Assistant Parking Clerk
- Licensing/Permitting Director
- \* Recreation/Permitting Coordinator
- \* Business Manager (Fire Dept.)
- \* **City Engineer/Assistant DPW Director**
- \* Public Buildings Superintendent
- \* Capital Projects Manager
- \* Field Operations Manager
- \* Business Manager (DPW)
- Solid Waste Coordinator
- \* Timekeeper/City Yard
- Supervisor Healthy Homes Coordinator
- Community Intervention Specialist
- Grants Administrator
- Business and Grant Manager (Police Dept.)
- \* Director of Emergency Communications

- \* Information Systems Specialist
- \* Designated Chief Procurement Officer
- \* Assistant City Auditor
- \* Elder Affairs Director
- \* Assistant Director of Elder Affairs
- Health & Elder Affairs Advocate
- \* Library Director
- \* Veterans Agent
- \* Asst. Director HHS/Jobs Coordinator
- \* HHS Director 1
- \* Health Director
- \* Public Health Nurse (BSN)
- \* Community Liaison
- \* ESL Service Manager
- \* ESL Instructor
- \* Refugee Placement Officer
- \* Job Advocate
- \* Planning Director
- Housing Director
- \* Financial Director (Planning and Development)
- \* Construction Manager
- \* Housing Rehabilitation Specialist
- \* Transportation Project Manager
- Landscape Architect
- \* Senior Housing Project Manager
- \* Project Manager
- \* Economic Development Project Manager
- \* Community Education Coordinator/Community Schools  
Director
- \* Emergency Services Manager
- Outreach Worker
- Community Schools On-Site Manager
- Civilian Domestic Violence Advocate
- Housing Development Project Manager
- Employment Services Manager
- Construction Employment Coordinator
- Emergency Coordinator HHS
- Weed and Seed Project Manager
- Capital Improvement Program Coordinator
- Special Projectors Coordinator (Planning and  
Development)
- Emergency Coordinator (HHS)
- Assistant Director of Planning and Development
- Assistant Director of Emergency Comnlunications
- Planner and Land Use Administrator (Planning and  
Development)
- Newcomer Advocate
- Financial Analyst

Facilities & Construction Manager  
**Assistant Director of DPW**  
311 Manager  
Community Engagement Specialist  
Downtown Coordinator  
WSD Asst. Superintendent

\* Positions described in MCR 4481 certification dated November 19, 1996.

**G.L.c. 150E, § 1 - Definitions**

\* \* \*

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.

\* \* \*

**Positions of the Parties**

**Summary of the City's Arguments**

The City argues that the Deputy DPW Commissioner exercises policy-making discretion, and that it is the duties actually performed, not titles or written job descriptions, that determine unit placement decisions. In developing an entire new division for DPW, the City maintains that [REDACTED] exercised a core managerial policy-making function. As Assistant Director/Operations and Deputy Commissioner, [REDACTED] urged the City to take over WSD operations, interacting directly with the City Manager with independence from the DPW Director. He projected the requirements and costs of the transition, appeared before City Council, created and filled the new positions, and developed plans and goals for the WSD Division. He also established new positions in the

Engineering Division and added a licensure requirement to the City Engineer position.

The City asserts that the past practice of including the Assistant Directors of other departments in the bargaining unit is immaterial, and that the pattern of including second-in-commands is not universal within the City. The City points to the Police, Fire, and Inspectional Services Departments are counterexamples. The City contends, that by describing this pattern as occurring in departments with "one or more SEIU support staff," City of Chelsea, CAS-19-7105 (2022), slip op. at 27, the DLR implied that it is characteristic of much smaller departments than the DPW. Summary of the Union's Position.

The Union contends that the City did not meet its burden to prove that the Deputy DPW Commissioner meets the statutory criteria for managerial status. The Union states that neither that position nor its predecessor make policy decisions of major importance on a regular basis. The Union maintains that the City did not identify a single policy that the Deputy Commissioner independently implemented. His recommendations were not accepted without significant independent review and revision by the City Manager and City Council. The Union argues that, as Assistant Director and then Deputy Commissioner, Mammolette's involvement with WSD operations was administrative and operational, not policy-making. Merely having input into the decision-making process, or making decisions that must be approved by higher levels of administration, are not equivalent.

The Union contends that even if the position did meet the statutory definition of a manager, it is exactly the same as the predecessor positions, which were historically

in the unit, and there has been no substantial change in the job description or job duties. As did the Assistant DPW Directors, the Deputy DPW Commissioner is the second-highest position in the DPW; assists in developing objectives and goals; and makes recommendations to improve services. The general areas of responsibility for both titles -- Project Management, Capital Improvements, Management, Data Collection, Budget, Arborist -- are identical.

### **Discussion**

The parties agree that this case is the equivalent of a unit clarification petition before the DLR. It is therefore appropriate to look to DLR precedent to decide whether the Deputy DPW Commissioner position belongs in the Union's bargaining unit. Indeed, both parties cited extensively to that precedent.

To decide whether a newly created position belongs in an existing bargaining unit, the DLR asks three questions in succession. First, was the position covered by the original certification or recognition? If not, does the parties' subsequent conduct, including bargaining history, indicate that they considered the position to be in the unit? If not, does the position shares a community of interest with other positions in the unit? City of Chelsea, slip op. at 23. If the position is covered by the original certification, it will not be excluded unless there has been a material change in job duties. City of Gloucester, 40 MLC 359, 362 (2014); Weston School Committee, 37 MLC 224, 226 (2011).

I am not convinced that the position of Deputy DPW Commissioner differs in any significant way from the former

position of Assistant DPW Director. The job descriptions are strongly similar, indeed identical in many respects. The chief difference stems from the City's decision to end its contract with R.H. White and operate WSD services itself. This required the creation and funding of a WSD Division within the DPW. As a result, where the Assistant Director "worked with" and "reviewed" the contractor's operations, the Deputy Commissioner was tasked with overseeing the transition and "setting the overall direction" of the new division. While this may well have affected the Deputy Commissioner's workload, I am not convinced that it changed the nature of the job. It was also part of the Assistant Director's job to "assist in the development of department objectives, plans and goals," "supervise department staff through subordinates," "assist in the staffing" of the DPW," and "direct the work of subordinates through supervisory staff." The addition of a completely new division most likely increased and complicated those duties, at least initially, but did not "materially change" them.<sup>6</sup>

The City's principal contention is that the position of Deputy DPW Commission must be excluded from the bargaining unit because it is managerial. As the City correctly observes, G.L.c. 150E expressly excludes managerial employees from the definition of "employee" under G.L.c. 150E, § 1, and consequently from the right to union representation under § 2. One substantial obstacle to the City's argument is the longstanding inclusion of the

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<sup>6</sup>The WSD Division is headed by a Superintendent and Assistant Superintendent. The Deputy Commissioner does not directly supervise its staff; he is the second-level supervisor, a role also filled by the Assistant Director.

position of "City Engineer/Assistant DPW" and "Assistant Director of DPW" in the bargaining unit - the latter through negotiations, and the former by the LRC in the original certification. Since the position of Deputy DPW Commissioner does not materially differ from the former position of Assistant DPW Director, it is hard to see any justification for removing it now.

Furthermore, I do not agree that the position of Deputy Commissioner is, or was, managerial. G.L.c. 150E, § 1 sets forth three characteristics, any one of which will denote an employee as managerial:

- a) Participate[s] to a substantial degree in formulating or determining policy, or
- b) Assist[s] to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or
- c) Ha[s] a substantial responsibility involving the exercise of independent judgement of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration.

The City does not contend that the Deputy DPW Commissioner has any involvement in collective bargaining or "personnel administration," nor is there evidence of such. Rather, the City maintains that the position is substantially involved in "formulating or determining policy."

It has long been held that the policy decisions contemplated by G.L.c. 150E, § 1, are "those of major importance when examined in the light of the objective of the public enterprise." Town of Wellesley School



Committee, 1 MLC 1389, 1403 (1975); aff'd sub nom. School Committee of Wellesley v. Labor Relations Com., 376 Mass. 112 (1978). "[L]imited" or "advisory" participation is insufficient to classify employees as managerial. Town of Wellesley at 1403-4. "...[M]erely providing some input into the decision-making process" does not qualify one as a manager. Town of Plainville, 18 MLC 1001, 1009 (1991).

It is indisputable that, from the beginning of his employment, ██████████ addressed his job with ambition and initiative. In recognition of these qualities, as well as Mammolette's prior experience as head of a municipal water department, the City Manager assigned him to investigate the performance of the City's WSD contractor. ██████████ fulfilled that assignment competently, thoroughly, and aggressively. Once City Council accepted and approved his position (although not without revisions), ██████████ drafted the job descriptions for the new WSD divisions and participated in selecting the employees.<sup>7</sup> As Deputy Commissioner, he submitted a draft of ambitious goals for the WSD Division, also at the request of the City Manager, though it is not clear whether these were adopted or achieved.

To prove managerial status, the proponent must show "that the employee functions at levels of administration where decisions and opinions will not be screened by another layer of administration before being implemented." University of Massachusetts, Boston, 46 MLC 121 (2019),

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<sup>7</sup> The City asserts that ██████████ "created" these positions and "hired" the incumbents, but generally speaking, municipal positions are "created" by the body that holds the purse strings - in this case, City Council - and the appointing authority is above the level of deputy head of a department.

slip op. at 26. Like the position at issue in University of Massachusetts, the Deputy Commissioner "performs important and high-level functions," but does not "independently make[] policy decisions" or decisions that "are not screened through another layer of administration." University of Massachusetts, slip op. at 26-27. The incumbent reports directly to the Commissioner, and at higher levels to the Deputy City Manager and City Manager. [REDACTED] did not independently formulate his proposal regarding WSD services. He was assigned to do so by the City Manager, just as he was assigned to present his aspirational goals for WSD. I do not doubt that the City Manager could have blocked either of these submissions from further consideration.

Finally, it is notable that the bargaining unit contains a number of positions at the Deputy Commissioner level, some of which date to the original LRC certification. I do not agree with the City that this history is immaterial. In University of Massachusetts, one of the factors that led the DLR to conclude that a position was not managerial was that titles with "similar high-level duties" were included in the bargaining unit. University of Massachusetts, slip op. at 27.

### **Conclusion**

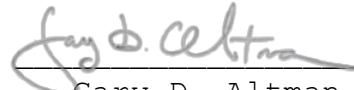
For all of the foregoing reasons, the Deputy DPW Commissioner position should be in the bargaining unit represented by the Union. The parties' agreement to submit this matter to arbitration provides:

... In the event the Arbitrator determines the position is a union position, the position shall revert immediately to the Union, unless the current occupant

of the position, [REDACTED] [REDACTED] is still Deputy Public Works Commissioner, in which case the position shall become a Union position upon the next vacancy. If the position reverts to the Union, the parties agree to meet on a classification of the position, except that in no event shall the then occupant of the position suffer any loss in pay.

The Award in this case will reflect that agreement.

June 1, 2023  
Brookline, Massachusetts

  
Gary D. Altman