

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

In the Matter of	*	
	*	
CITY OF BOSTON	*	Case No. MUP-04-4050
	*	
and	*	Date Issued:
	*	
BOSTON POLICE PATROLMEN'S	*	December 10, 2008
ASSOCIATION, IUPA, LOCAL 16807,	*	
AFL-CIO	*	

Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

Appearances:

Stephen B. Sutliff, Esq.	-	Representing the City of Boston
Amy Laura Davidson, Esq.	-	Representing the Boston Police Patrolmen's Association, IUPA Local 16807, AFL-CIO

DECISION¹

Statement of the Case

1 On February 14, 2004, the Boston Police Patrolmen's Association, IUPA Local

¹ Pursuant to 456 CMR 13.02(1) of the former Labor Relations Commission's regulations, this case was designated as one in which the former Labor Relations Commission would issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment Relations Board (Board) is the Division agency charged with deciding adjudicatory matters. All references to the Division or the Board include the former Commission.

1 16807, AFL-CIO (Association, Union, or BPPA) filed a charge with the former Labor
2 Relations Commission (Commission), alleging that the City of Boston (City) had vio-
3 lated Sections 10(a)(1) and 10(a)(5) of M.G.L. c.150E (the Law). Following an investi-
4 gation, the former Commission issued a complaint on September 8, 2004, alleging that
5 the City had violated Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law by not
6 providing in a timely manner relevant information reasonably necessary for the Asso-
7 ciation to execute its duties as collective bargaining representative. The City filed its
8 answer to the complaint on December 3, 2004.

9 On May 3 and 4, 2005, a duly-designated Board agent, Victor Forberger, Esq.
10 (Hearing Officer), conducted a hearing at which all parties had the opportunity to be
11 heard, to examine witnesses, and to introduce evidence. On November 18, 2005, the
12 Association and the City filed their post-hearing briefs.

13 On October 13, 2006, the Hearing Officer issued Recommended Findings of
14 Fact. The Association filed challenges on December 14, 2006, the City filed chal-
15 lenges on December 26, 2006, and the Association filed opposition to the City's chal-
16 lenges on January 5, 2006. In light of the challenges filed by the parties, we have
17 modified the Hearing Officer's Recommended Findings of Fact where appropriate and
18 summarize the relevant portions below.

19 Motion to Reopen Hearing

20 As a preliminary matter, we address the City's motion to reopen the hearing. On
21 December 15, 2006, the City moved to reopen the hearing and enter a transcript of the
22 hearing in Case No. MUP-02-3349 and a fixed copy of an exhibit to correct testimony in
23 the instant matter about who requested a postponement in Case No. MUP-02-3349 and

1 to rectify the impression that the documents in an exhibit for Case No. MUP-02-3349
2 were in no apparent order. The Union filed its opposition to this motion on January 16,
3 2007.

4 Section 13.14 of the former Commission's regulations, 456 CMR 13.14, authorizes
5 reopening records "prior to the issuance of a final decision" in a case. However, absent
6 extraordinary circumstances, the Board will not reopen a record. City of Haverhill, 17
7 MLC 1215, 1218 (1990). The Board has previously determined that to do otherwise jeo-
8 pardizes the finality of the Board's administrative proceedings and wastes the Division's
9 limited resources. Boston School Committee, 17 MLC 1118, 1121 (1990); Town of Way-
10 land, 5 MLC 1738, 1740 (1979). Evidence that a party seeks to include in the record after
11 the close of the hearing generally must be newly-discovered evidence, which was in exis-
12 tence at the time of the hearing, but of which the moving party was excusably ignorant,
13 despite the exercise of reasonable diligence. Boston City Hospital, 11 MLC 1065, 1075
14 (1984) (citations omitted). A transcript of a prior proceeding or an exhibit from a prior pro-
15 ceeding do not qualify as newly-discovered evidence, and so, for these reasons, and the
16 general principles set forth above, we deny the City's motion to reopen the record to ad-
17 mit these documents.

18 Findings of Fact²

19 The following facts are derived from the testimonial and documentary evidence
20 introduced during the hearing as well as from the parties' stipulations.

21 In 2001, the Association represented approximately 1,200 patrol officers of the
22 City Police Department's (Department or BPD) approximately 2,200 sworn personnel.³

² The Board's jurisdiction is uncontested.

1 The Department has organized these personnel into approximately 50 work units and
 2 eleven districts that represent Boston's various geographic regions.⁴ The patrol offi-
 3 cers in these districts serve as the front line in the Department's efforts to maintain pub-
 4 lic safety and to secure property within the City's geographic borders.

5 In early October of 2001, the Department issued written reprimands and sus-
 6 pensions to Patrol Officer William Flippin (Flippin) and other patrol officers in District C-
 7 11 for having, in the aggregate, more than ten but less than twenty unexcused ab-
 8 sences in a calendar year. At the time, the Association believed that this discipline
 9 constituted a change from the Department's prior practice of only deducting one day's
 10 pay for each unexcused absence that was more than ten but less than twenty days in a
 11 calendar year.⁵ As a result, on October 24, 2001, the Association filed Grievance #16-
 12 1521, alleging that the City had violated various provisions of the parties' collective
 13 bargaining agreement (Agreement) by disciplining Flippin and other patrol officers for

³ Besides the patrol officers represented by the Association, there are three other bar-
 gaining units that include sworn personnel. The Department also deals with six other
 employee organizations regarding the Department's non-sworn personnel.

⁴ These districts are:

A-1	Downtown/Beacon Hill/Chinatown/Charlestown	A-7	East Boston
B-2	Roxbury/Mission Hill	B-3	Mattapan/North Dorchester
C-6	South Boston	C-11	Dorchester
D-4	Back Bay/South End/Fenway	D-14	Allston/Brighton
E-5	West Roxbury/Roslindale	E-13	Jamaica Plain
E-18	Hyde Park		

⁵ The Association does not dispute the Department's policy for disciplining patrol offi-
 cers with more than twenty unexcused absences. Furthermore, the Association does
 not contest the Department's right to deduct one day's pay for each unexcused ab-
 sence over a ten-day limit.

1 having, in the aggregate, between ten and twenty unexcused absences in a calendar
2 year.⁶

3 Two days later, on October 26, 2001, Association Vice President Ron MacGil-
4 livray (MacGillivray) followed up Grievance #16-1521 with a request for information,
5 which states in relevant part:

- 6 • For all of District C11, yearly time cards of sworn
7 personnel (assigned and detailed in) that used more
8 than 10 sick days in a calendar year from January
9 1995 to present (2001) with the date of physician cer-
10 tificates for all days over ten in a calendar year on
11 each card;⁷
- 12
- 13 • Names of all District C-11 (assigned and detailed in) sworn
14 officers excused by Captain Dunford from submitting any
15 and all physician's certificates.
- 16
- 17 • Names and dates of District C-11 (assigned and detailed in)
18 sworn officers who had used more than 10 sick days in a
19 calendar year and did not receive compensation for those
20 days and were considered absent without leave.
- 21
- 22 • Yearly district personnel files of all District C11 (assigned
23 and detailed in) sworn personnel that used more than 10
24 sick days in a calendar year.
- 25
- 26 • Copies of all District C11 (assigned and detailed in) sworn
27 personnel oral and written reprimands concerning the use
28 of 10 or more sick days in a calendar year.

29 In a letter dated November 16, 2001, MacGillivray submitted an additional request for
30 information relative to Grievance #16-1521, which states in relevant part:

- 31 1. Yearly time cards of those who used more than 10 sick days
32 in a calendar year from January 1995 to present (2001) with

⁶ Under the parties' Agreement, grievances must be filed within thirty days of a party becoming aware of the alleged violation.

⁷ This finding has been added for the sake of completeness.

- 1 the date of physician certificates for all days over ten in a cal-
2 endar year on each card;
- 3 2. Names and dates of Districts A1, B2, D14, E18 (assigned and de-
4 tailed in) sworn officers who had used more than 10 sick days in a
5 calendar year and did not receive compensation for those days and
6 were considered absent without pay.
- 7 3. Yearly district personnel files of all Districts A1, B2, D14, E18 (as-
8 signed and detailed in) sworn personnel that used more than 10 sick
9 days in a calendar year.
- 10 4. Copies of all Districts A1, B2, C11, D14, E18 (assigned and detailed
11 in) sworn personnel oral and written reprimands and suspensions
12 concerning the use of 10 or more sick days in a calendar year.⁸

13 These requests were just two of 67 information requests that the Association
14 filed with the Department from October of 2001 to November of 2003. In comparison,
15 the nine other unions at the Department filed, in total, approximately 40 requests during
16 the same time period.

17 The Department officials responsible for responding to information requests re-
18 garding labor relations matters were directors in the Department's Office of Labor Rela-
19 tions, Sandra DeBow (DeBow)⁹ and Margaret O'Malley (O'Malley).¹⁰ When DeBow re-
20 viewed these requests, she initially examined them to determine the relevancy of the
21 information requested, the burden placed on the Department in providing the requested
22 information, and whether any confidentiality concerns existed regarding the requested
23 information. She also consulted with Lt. Charles O'Hear (O'Hear) of the Department's
24 Time and Attendance Unit about how the Department might supply the attendance and
25 discipline information the Association had requested. First, O'Hear described to De-

⁸ This finding has been amended to more accurately reflect the record evidence.

⁹ DeBow was on maternity leave from November of 2002 to March of 2003.

¹⁰ The Association also filed requests for information under the Commonwealth's public records law, M.G.L. c.66 et seq., that other Department personnel handled.

1 Bow how each patrol officer has three or four timecards because of the various work
2 opportunities available in the Department (e.g., regular assignment, detail assign-
3 ments, and special investigation assignments). Second, O'Hear explained that the De-
4 partment's centralized personnel files contained job applications, contact information,
5 and transfer orders but not disciplinary records. These records, O'Hear observed,
6 were kept in district or work unit personnel files or in the Department's Internal Affairs
7 division.¹¹ Third, O'Hear noted that district and work units did not contain historical
8 staffing information, because local personnel files moved with each employee when he
9 or she transferred to another district or work unit. Accordingly, the Department could
10 not assemble a complete attendance record in District C-11, for example, in any year
11 other than the current year without an examination of all personnel files in the Depart-
12 ment. Finally, DeBow knew that records regarding physician's certificates were housed
13 in a unit separate from Time and Attendance. As a result, O'Hear did not know imme-
14 diately from his records which absences were excused or unexcused.

15 DeBow and MacGillivray had several informal conversations regarding the
16 Association's October 26, 2001 and November 16, 2001 requests as well as other

¹¹ Oral reprimands are kept in district or work unit personnel files, while written reprimands are kept at Internal Affairs.

1 Association information requests.¹² While those discussions were taking place, on
2 November 20, 2001, Deputy Superintendent Patrick Crossen (Crossen) issued the
3 following directive to the Department's employees:

4 Effective immediately, the following procedure will be followed by District
5 Commanders regarding the use of sick time.

6 When sworn personnel are sick for 5 days in a calendar year, District
7 Commanders will send a letter (sample attached) to the officer reminding
8 [him or her] of the importance of accumulating sick time for unexpected
9 medical emergencies. A copy will be kept in that person's district file.

10 When a sworn member of the Department is sick for five days in a row or
11 ten days in a calendar year, a letter (copy attached) will be sent to that
12 individual. The letter advises the individual that a physician's certificate
13 must be submitted to the District Commander as evidence that such
14 absence was necessary. The letter also allows the officer to meet with
15 the Commander to discuss the reasons for the absences.

¹² Both DeBow and MacGillivray could not recall the particular details regarding when these conversations occurred, what was said, or even what the specific subject matter was except to observe what they believed had been communicated or what they understood might have been conveyed. However, in these conversations, MacGillivray clarified that the time frame for the Association's requests was 1995 to 2001 and DeBow explained that she was having difficulty providing the requested information. This finding has been amended based on challenges by both the City and the Association, which we have found to be supported by the record evidence.

1 If an employee fails to file such a certificate within seven days after the
 2 request, a Complaint Form #1920 should be filed against the individual
 3 for violation of Rule 102 Section 8 (Directives and Orders) and for viola-
 4 tion of Rule 110 section 5 (Sick Leave).¹³
 5 The concept of Progressive Discipline should be used with regards to this
 6 situation:
 7 First Offense — Oral Reprimand
 8 Second Offense — Written Reprimand
 9 Third Offense — 1 Day Suspension
 10 Fourth Offense — 2 Day Suspension
 11 And so on.

12 Due to the November 20th directive and the Department's lack of response to
 13 the Association's information requests, the Association concluded that the Department
 14 recently had changed its sick leave policy without bargaining with the Association over
 15 that change. On January 31, 2002, the Association filed a prohibited practice charge in
 16 Case No. MUP-02-3349, alleging that the City unilaterally had altered its sick leave

¹³ Department Rule 102, Section 8 states, in relevant part, that: "Employees shall obey and comply with all rules, orders and other directives of the Department whether transmitted verbally or in writing." Rule 110, Section 5 states, in relevant part, that:
 Employees of this department, after completing six months of continuous service, shall be allowed sick leave with pay for periods not to exceed fifteen working days for each year of service thereafter. . . .

* * *

A Police Officer absent for a period of five days or more or absent more than ten working days in a calendar year may be required by the Police Commissioner to submit a physician's certificate as evidence that such absence was necessary.

* * *

If any employee fails to file such a certificate within seven days after a request thereof, the Police Commissioner may at [his or her] discretion have such absence applied to vacation leave or leave of absence without pay or he may designate the employee as being absent without leave.

1 policies on November 20, 2001.¹⁴

2 In a letter to the Department dated March 4, 2002, Amy Davidson (Davidson),
3 counsel for the Association, reiterated MacGillivray's original October 26, 2001 informa-
4 tion request. On March 8, 2002, DeBow personally handed MacGillivray two lists of
5 sworn personnel in the Department. The first list ranked sworn personnel in descend-
6 ing order by the total number of absent-and-unpaid days¹⁵ in the years 1995 to 2000
7 (excluding 1998).¹⁶ The second list ranked the Department's sworn personnel in de-
8 scending order according to the number of sick days taken in 2000. For the sworn per-
9 sonnel on the second list, the number of sick days taken in 1995 to 1999 (excluding
10 1998) is also indicated. The Department prepared these lists as part of its own study of
11 sick leave within the Department.¹⁷

¹⁴ In addition to the charge, on January 9, 2002 and January 24, 2002, the Association respectively filed Grievances #16-1533 and #16-1535. Grievance #16-1533 alleges that the Department violated various provisions of the Agreement by disciplining a patrol officer for his tenth and then eleventh unexcused absences in December of 2001. Grievance #16-1535 alleges that the Department violated various provisions of the Agreement by disciplining patrol officers inequitably under the Department's sick leave policy. Additionally, both grievances allege violations of the Agreement regarding physician's notes. Under a provision in the parties' Agreement, a patrol officer must obtain a physician's note after ten absences in a calendar year to avoid having that absence marked as unexcused.

¹⁵ In Department parlance, these days are referred to as "X-days." The Department may mark an employee as absent and unpaid, i.e., an X-day, for any number of reasons, including disciplinary suspensions unrelated to unexcused absences.

¹⁶ Because of a malfunction and changeover in 1998 in computer systems for managing the Department's personnel records, personnel information for that year was not readily available to the City. Prior to 1998, each City agency had developed its own practices for tracking employee attendance. After 1998, the City instituted a centralized attendance tracking system for all its various agencies.

¹⁷ The Hearing Officer took administrative notice that these lists were respectively entered into the record in Case No. MUP-02-3349 as Union Ex.12 and Union Ex.11.

1 reprimands given to twenty-one patrol officers and written reprimands given to six
2 patrol officers in District C-11 for using more than ten sick days in 2001.¹⁸ Only the
3 written reprimands show that the discipline was for having more than ten unexcused
4 absences related to illness in the 2001 calendar year. The oral reprimands do not
5 indicate the reason for the discipline.

6 In preparation for the arbitration hearing for Grievances #16-1521, #16-1533,
7 and #16-1535,¹⁹ Association counsel Alan Shapiro (Shapiro) requested in an e-mail
8 message dated November 6, 2002 to Robert Boyle (Boyle), City counsel, a "list of
9 officers (names are not necessary) in District C-11 who utilized more than ten sick days
10 in any calendar year from 1995 through 2001." For the patrol officers on that list,
11 Shapiro also asked Boyle to provide for each, broken down by year: (a) the number of
12 physicians' certificates supplied; (b) the number of unpaid "X" days given; (c) the
13 number of oral warnings; (d) the number of written warnings; and (e) the number of
14 suspensions. Boyle did not respond to this request until March 19, 2003, when he
15 provided a one-page time and attendance discipline report listing twenty Department
16 employees, the discipline the Department had meted out, and the date of that
17 discipline. The dates range from September 16, 1998 to December of 2002. The
18 specific reason for the discipline is not indicated. Furthermore, for the five cases of

¹⁸ Except for Flippin, the Association did not supply the Department with releases from patrol officers who received these reprimands. Moreover, the Association did not provide the City with releases from patrol officers for reprimands or other disciplinary measures subsequently provided to the Association by the City.

¹⁹ The first arbitration hearing date occurred in November of 2002 and was continued for a second day of hearing. As of May 4, 2005, the parties had yet to schedule that second hearing date.

1 discipline occurring prior to 2001, the Association knew from its involvement in those
2 cases that the patrol officers listed in the report each had more than twenty unexcused
3 absences in the relevant calendar year.

4 Meanwhile, on November 21, 2002, the Commission issued a complaint of pro-
5 hibited practice in Case No. MUP-02-3349, alleging, in part, that the City had violated
6 Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law by unilaterally changing its sick
7 leave policy when the Department had issued a written reprimand on October 16, 2001
8 to Flippin for unexcused sick leave that day and when Crossen had issued his Novem-
9 ber 20, 2001 directive.²⁰ Additionally, on November 21, 2002, the Association filed
10 Grievance #16-1585, alleging that the City had violated various provisions of the par-
11 ties' Agreement by disciplining a patrol officer for having, in the aggregate, between ten
12 and twenty unexcused absences.

13 In a letter dated March 11, 2003 to the City's counsel, Nicholas Anastasopoulos
14 (Anastasopoulos), Davidson indicated that the Department previously had provided
15 copies of oral and written reprimands issued to patrol officers in District C-11 for the
16 2001 calendar year, noted that "[i]t is not clear whether any such reprimands were is-
17 sued prior to or since 2001," and requested that the Department provide the following
18 information:

19 Copies of any and all oral and written reprimands or suspensions issued
20 to police officers in District C11 who were absent between eleven and
21 twenty sick days in a calendar year for the years 1995, 1996, 1997, 1998,
22 1999, 2000 and 2002.

²⁰ The Hearing Officer took administrative notice that, because of various postponements, the hearing in Case No. MUP-02-3349 opened on February 20, 2003 and was continued to November 5 and 6, 2003.

1 Anastasopoulos did not respond to this request prior to leaving the City's employment
2 in July of 2003. In a letter dated August 11, 2003, Davidson resubmitted her March 11,
3 2003 letter to Boyle, who had replaced Anastasopoulos as City counsel in Case No.
4 MUP-02-3349. Boyle replied that same day, explaining that he previously had pro-
5 duced some documents regarding sick leave abuse in response to Shapiro's Novem-
6 ber 6, 2002 information request.

7 Two days later, on August 13, 2003, Boyle provided Davidson with additional
8 information. This information included: (a) the total number of patrol officers within the
9 Department with ten or more sick days in 1995 to 1997, 1999, and 2000; (b) the aver-
10 age number of sick days taken by patrol officers in each district in the calendar years
11 2000 and 2001; (c) a list of patrol officers required to submit doctor's notes for being
12 absent in calendar year 2001, the date of the absence triggering this requirement, and
13 what discipline was meted out, if any, to the patrol officer; (d) a listing by district of pa-
14 trol officers in calendar year 2002 given five-day warnings, ten-day warnings, and oral
15 or written reprimands as well as the week these warnings were given; and (e) the dis-
16 ciplinary report previously provided to Shapiro on March 23, 2003.²¹ These documents
17 did not indicate what oral or written discipline, if any, the Department had imposed on
18 patrol officers who had, in the aggregate, between ten to twenty unexcused absences
19 in a calendar year prior to 2001. Boyle asked Davidson to review this information and
20 to let him know "whether you consider anything to be outstanding from the information

²¹ The Hearing Officer took administrative notice that in Case No. MUP-02-3349 item (a) was entered into the record as City Ex.23 and that item (b) was marked as City Ex.24 but not admitted into evidence.

1 requests." In a letter dated October 30, 2003 to Boyle, Davidson states, in relevant
2 part, that:

3 The information provided by you only indicates disciplinary action was
4 taken against officers absent between eleven and twenty days in 2001
5 and 2002. Your response does not reflect that any oral or written reprimands or suspensions were issued to District C11 police officers who were absent between eleven and twenty sick days in a calendar year for the years 1995, 1996, 1997, 1998, 1999 or 2000.

9 Based upon the foregoing, I assume that during the years 1995, 1996,
10 1997, 1998, 1999 and 2000, no oral or written reprimands or suspensions
11 were issued to officers in District C11 who were absent between eleven
12 and twenty days.

13 Please be advised that I intend to introduce my information requests and
14 your response thereto at the hearing in this matter on November 5, 2003.

15 That same day, Boyle replied, in relevant part, that:

16 I provided you with what information I had when I first took over this case
17 and we discussed that if you had any issue with it you would let me know
18 and we would take it from there. For you now to attempt to gain an unfair
19 tactical advantage when you did not call, as you assured you would, is
20 unacceptable. Rather, I have sent a request for all district captains to re-
21 view district personnel files for oral and written warnings for the period
22 prior to November 2001. My understanding is that you already have in-
23 formation from C-11 regarding prior discipline for sick abuse.

24
25 Davidson responded to Boyle in a letter dated October 31, 2003, writing, in relevant
26 part, that:

27 [T]he Union has been requesting evidence of any oral and written reprimands issued to officers for absences between ten and twenty days since October of 2001 and again in March and August of 2003. The City has never provided any, presumably because no such evidence exists. To suggest that I am trying to gain "unfair tactical advantage" by pointing that out is simply nonsense.

33 On October 31, 2003, O'Malley requested district captains and other unit com-
34 manders to search patrol officer personnel files for oral reprimands, written warnings,
35 and suspensions for excessive absenteeism pre-dating November 2001. Around 5 PM
36 on October 31, 2003, Boyle provided Davidson a stack of documents approximately an

1 inch and a half thick in no apparent order. These documents range in date from 1989
2 to 2001 and relate to numerous matters regarding attendance, including notices to pa-
3 trol officers that they have used ten sick days in a calendar year, requests for physi-
4 cian's notes, and oral reprimands for excessive absenteeism that do not indicate either
5 the number of absences or the reasons for the absences. Included with these docu-
6 ments are two oral reprimands, dated March 18, 1998 and April 29, 1998, to patrol offi-
7 cers in District 11 for unexcused absences due to illness after having taken ten sick
8 days in the 1998 calendar year.

9 On November 3, 2003, Boyle provided Davidson a second stack of documents
10 in no apparent order. This stack was approximately an inch thick. As with the October
11 31st stack of documents, the documents pertain to numerous matters relating to atten-
12 dance at the Department including: requests for physician's notes; an oral warning for
13 excessive absenteeism dated June 6, 1992 to a patrol officer when he had used eight
14 sick days in calendar year 1992 and had only seven sick days remaining; an oral warn-
15 ing to a lieutenant dated March 13, 1992 for using nine sick days that calendar year;
16 and an oral warning dated June 6, 1992 to a sergeant for using twelve sick days that
17 calendar year and having only three sick days remaining. The majority of documents
18 are attendance disciplinary tracking sheets for all District C-11 personnel. Information
19 on these tracking sheets report when the Department issued notices for using five sick
20 days in a calendar year, notices for using ten sick days in a calendar year, and letters
21 of commendation. The sheets do not report if the Department disciplined patrol officers
22 for having more than ten but less than twenty unexcused absences in a calendar year.

1 On November 4, 2003, Boyle provided Davidson a third stack of documents ap-
2 proximately an inch and a quarter thick and in no apparent order. Many of these doc-
3 uments duplicated what Boyle had provided in the preceding two packets as well as
4 documents previously provided to the Association or its counsel.

5 On November 5, 2003, the hearing in Case No. MUP-02-3349 re-convened, and
6 Boyle provided Davidson two additional packets of documents. The first packet con-
7 tained 29 pages of disciplinary records regarding absenteeism for seven patrol officers.
8 These records do not indicate the number of absences for which the Department disci-
9 plined these patrol officers. The second packet contained 46 pages referring to disci-
10 pline the Department had meted out to the seven patrol officers and indicating that the
11 patrol officers had more than ten but less than twenty unexcused absences because of
12 illness in the 1996 calendar year.²²

13 On November 6, 2003, there was a third day of testimony in Case No. MUP-02-
14 3349. At the end of the day, the Association requested, with the City's assent, to post-
15 pone the November 7, 2003 hearing date to give the Association time to examine all
16 the information recently provided by the City. The hearing officer agreed, and the hear-
17 ing was postponed until January of 2004.²³ On November 18, 2003, Boyle sent
18 Davidson and Shapiro a stack of documents approximately an inch thick in no apparent
19 order. Many of these documents were previously provided to Association counsel. In

²² The Hearing Officer took administrative notice that the first packet was marked for identification purposes only as City Ex.8 in Case No. MUP-02-3349 on the following day, November 6, 2003.

²³ The Hearing Officer took administrative notice of the January 2004 hearing date from Commission records in Case. No. MUP-02-3349.

1 the middle of the stack contained a listing of Department personnel who had been dis-
2 ciplined for having "more than ten but less than twenty sick days without adequate ex-
3 cuse prior to November 20, 2001."

4 In a letter dated November 25, 2003, Shapiro responded to the information
5 Boyle recently had provided, stating in relevant part:

6 These issues pertain to discipline for officers who did not produce physi-
7 cian's certificates for sick days taken beyond ten in a calendar year. The
8 Union brought both this arbitration case and the prohibited charge in the
9 belief that the disciplining of officers for failing to produce such certificates
10 began in the summer of 2001, but that prior to that time, the City/BPD
11 had not disciplined officers for failing to produce the certificates.

12 [Shapiro then reviewed the Association's information requests described
13 above and the City's responses.]

14 Having received no information from the City/BPD of prior discipline for
15 officers who did not supply physicians' certificates, the BPPA went ahead
16 and expended thousands of dollars in legal fees and countless hours in
17 pursuing a prohibited practice and arbitration over these issues. . . .
18 [T]he prohibited practice relates only to the discipline issue and was pre-
19 mised upon the City's failure to produce any evidence that, prior to Octo-
20 ber of 2001, officers received any discipline other than the docking of pay
21 for absences between ten and twenty days.

22 Lo and behold, Tuesday, in the middle of both phases of this litigation, we
23 finally received the information requested at least one, and in some cas-
24 es, two years ago. It demonstrates that officers from different police dis-
25 tricts were disciplined for failing to produce physicians' certificates
26 throughout the '90's and directly refutes the presumption upon which the
27 Union's case was based.

28 Having received this information, the Union has no choice except to with-
29 draw the Labor Relations Commission charge and this aspect of the arbi-
30 tration case.²⁴ **Had the BPPA been provided with this information in**
31 **anything remotely close to a timely response, these cases would**
32 **never have been filed.** But the Union is left with thousand of dollars in

²⁴ As of May 4, 2005, the Association had not formally withdrawn Grievances #16-1521, #16-1533, #16-1535, and #16-1585 from the arbitration docket, because there were aspects to some of those grievances relating to physician's notes that the Association still disputed.

1 attorneys' fees incurred because of the City's failure to timely supply this
2 information. [Emphasis in original.]

3 Boyle responded to Shapiro's letter on December 10, 2003, writing in relevant
4 part:

5 [T]he American Rule is that each party bears the burden of its own litiga-
6 tion costs. . . . From the City's point of view, rather than assist the City in
7 curbing sick leave abuse, the Union in this litigation was seeking to ex-
8 pand the opportunities for sick leave abuse.

9 The City disagrees with the premise of your letter that the Union was
10 lulled into litigating its allegation that the Department did not discipline of-
11 ficers for using between 10 to 20 unexcused sick days per year. The Un-
12 ion has the ability to obtain information from its members, district union
13 representatives and the Department's office of labor relations. In early
14 1997 [a captain filed disciplinary forms] against at least seven (7) patrol
15 officers in district B2 for attendance issues. It is difficult for me to believe
16 that the Union never heard [of this prior discipline] either from district offi-
17 cers or from [the captain] himself.

18 The Union has an obligation to investigate claims before putting them into
19 litigation. Officer Flippin's claim in cases numbered 16-1521 and MUP-
20 02-3499 are baseless. The contract contains a just cause provision and
21 under well-established just cause principles, employees may be disci-
22 plined for excessive or patterned unexcused sick leave as it constitutes
23 circumstantial proof of sick leave abuse. . . .

24 As to the City's production of records in October and November of 2003
25 in MUP 02-3499, the Department indicated that the Union could submit
26 releases for records for any particular officer's records. The Union did not
27 follow up. If the Union desired the documents, it could have followed up.
28 Location and production of records in October and November 2003 was
29 labor intensive. [As witness testimony in Case No. MUP-02-3499 indi-
30 cated], enforcement of the prohibition against sick abuse varied accord-
31 ing to the discretion of the district commanders. Also, there was no cen-
32 tral repository for these records. In August of 2003, attorney Davidson of
33 your office asked that I follow up on the information request in that case,
34 as I had been assigned to the case following the departure of Nicholas
35 Anastopoulos. I offered to meet with her in advance of the November 5,
36 2003 hearing.

37 In a letter dated December 31, 2003, the Association advised the former Com-
38 mission that it wished to withdraw the charge in Case No. MUP-02-3349 because of

1 information recently provided by the City. The former Commission subsequently al-
2 lowed this request.

3 Opinion

4 If a public employer possesses information that is relevant and reasonably nec-
5 essary to an employee organization in the performance of its duties as the exclusive
6 collective bargaining representative, the employer is generally obligated to provide the
7 information upon the employee organization's request. Board of Higher Education, 29
8 MLC 169, 170 (2003), citing, Higher Education Coordinating Council, 23 MLC 266, 268
9 (1997). The employee organization's right to receive relevant and reasonably neces-
10 sary information is derived from the statutory obligation to engage in good faith collec-
11 tive bargaining, including both grievance processing and contract administration. Sher-
12 iff's Office of Middlesex County, 30 MLC 91, 96 (2003), citing, Boston School Commit-
13 tee, 24 MLC 8, 11 (1998) (additional citations omitted).

14 Here, there is no dispute that the City eventually supplied the requested infor-
15 mation. Rather, the parties contest vigorously whether the City's responses were time-
16 ly or unreasonably dilatory. The Association argues that the City sat on its hands until
17 the requested information became essential to the City's defense in Case No. MUP-02-
18 3349, and, as a result, the City owes the Association the costs of litigating this case as
19 well as associated grievances. The City counters by arguing that the Association's re-
20 quests required a complicated and massive effort at gathering information from both
21 unit and non-unit personnel, and that the Association was lax in clarifying the purpose
22 and scope of the requests until after the hearing in Case No. MUP-02-3349 had al-
23 ready begun.

1 We first address the issue of whether the City's delay in providing the requested
2 information was unreasonable. We then examine the issue of whether the Association
3 is entitled to recover litigation costs in this matter as part of a make-whole remedy.

4 The Delay in Providing the Requested Information

5 An employer may not unreasonably delay in furnishing requested information
6 that is relevant and reasonably necessary to the employee organization's responsibili-
7 ties as the exclusive collective bargaining representative. Boston School Committee,
8 24 MLC 8, 11 (1997). In determining whether a delay in the production of information is
9 unreasonable, the Board has considered a variety of factors including: (1) whether the
10 delay diminishes the employee organization's ability to fulfill its role as the exclusive
11 representative, Id.; (2) the extensive nature of the request, UMass Medical Center, 26
12 MLC 149, 158 (2000); (3) the difficulty of gathering the information, Id.; (4) the period of
13 time between the request and the receipt of information, HECC, 23 MLC 266, 269
14 (1997); and (5) whether the employee organization was forced to file a prohibited prac-
15 tice charge to retrieve the information, Board of Higher Education, 26 MLC 91, 93
16 (2000).

17 The Association contends that the City did not adequately respond to its Octo-
18 ber 26, 2001 and November 16, 2001 requests until approximately two years later, on
19 November 18, 2003. In these requests, the Association asked for copies of personnel
20 files for all sworn personnel that used more than ten sick days in a calendar year, lists
21 of sworn personnel who had more than ten unpaid sick days and the dates of those
22 unpaid sick days, copies of all oral and written reprimands given to sworn personnel for
23 the use of ten or more sick days, and the names of sworn officers in District C-11 ex-

1 cused from submitting physician's certificates for their sick days. It is obvious from this
2 summary that any employer would be hard-pressed to respond quickly. While the re-
3 quests themselves do not specify the relevant calendar years, the City's subsequent
4 responses as well as additional requests indicate that the relevant timeframe was for
5 seven years of data — 1995 to 2001. Furthermore, these requests encompassed in-
6 formation from all of the Department's approximately 2,200 sworn personnel,²⁵ and so
7 represented a considerable undertaking.²⁶ The City also had the difficulty of gathering
8 this information from several disparate sources and locations for each Department em-
9 ployee before it could even determine if those employees had received oral or written
10 discipline for having, in the aggregate, more than ten but less than twenty unexcused
11 sick days in a calendar year.

²⁵ The Association argues in its brief and in portions of its challenges that it clarified the scope of these requests to include only its own unit members. The record does not support that claim, however, and the City's responses, including the November 18, 2003 response, were not limited to the Association's bargaining unit. Furthermore, the portion of the transcript the Association points to in its challenges states: "[MacGillivray's] response was that [the Association needs] to know if our officers are being treated different then [sic] other bargaining unit members."

²⁶ When an employee organization seeks information about employees outside the unit, the showing of relevance must be higher and the demonstration of relevance must be more precise. Commonwealth of Massachusetts, 21 MLC 1499, 1503 (1994). Because the Association needed to determine if the allegedly new sick time disciplinary policy represented a change for all of Department's sworn personnel or just its own bargaining unit, the Association has met this burden. City of Boston, 28 MLC 49, 51 (2001), *vacated and remanded on other grounds sub. nom, City of Boston v. Labor Relations Commission*, 61 Mass. App. Ct. 397, 400-401 (2004) (information sought by union regarding a management report was relevant and reasonably necessary to union's performance of its duties where union needed information to determine whether it should pursue a grievance and the City was aware that the grievance concerned member of management). Accordingly, the City's argument that this part of the Association's information requests were overbroad is without merit.

1 Still, the information requested by the Association, while voluminous and difficult
2 to acquire, was not unduly burdensome. DeBow had learned from O'Hear soon after
3 MacGillivray's first requests that the only way to get the requested discipline reports
4 was to examine the personnel files at each district and work unit. In her March 22,
5 2002 letter, she informed the Association that she had concluded that such an effort
6 was beyond the Department's ability to undertake. That defense might have been
7 plausible if the Department was limited to just DeBow and O'Malley in preparing re-
8 sponses to the Association's information requests. The Department, however, is not a
9 small operation with limited resources, and the record demonstrates that DeBow and
10 O'Malley had a great deal of assistance in responding to the Association's Information
11 requests. Boyle prepared several responses himself, and, on October 31, 2003,
12 O'Malley directed district captains to conduct the labor-intensive search of district per-
13 sonnel files that DeBow had previously said could not be done. Once that search be-
14 gan, relevant information began appearing that same day, and by November 18th, the
15 City had produced unambiguous evidence indicating that there had been no change in
16 its sick leave discipline policy.

17 In short, what DeBow said could not be done actually was accomplished in un-
18 der twenty days. As a matter of common sense, this fact alone is sufficient to indicate
19 that the City's delay in providing the requested information was unreasonable. The par-
20 ties, however, heatedly debate whether the City's initial refusal to provide confidential
21 information should be an additional factor in this analysis.

22 On March 22, 2002, the City indicated it would not provide personnel files and
23 disciplinary records except for those patrol officers who had signed waivers regarding

1 the disclosure of that information. On April 18, 2002, however, the City dropped its
2 demand for waivers regarding the release of disciplinary records and began providing
3 disciplinary records to the Association, even though disciplinary reports are part of an
4 individual's personnel file. Wakefield Teachers Association v. School Committee of
5 Wakefield, 431 Mass 792, 798 (2000). As a result, the issue of whether the City met its
6 affirmative obligation under the Law to initiate a discussion regarding alternative ways
7 to permit the Association access to the necessary information is not before us, and the
8 parties' arguments regarding this issue appear to be misplaced.²⁷

9 The City finally argues that the information it provided prior to November 1, 2003
10 and as early as March of 2002 satisfied the Association's requests for information.
11 This argument is specious. Because the issue in dispute was whether the Department
12 in 2001 adopted a new policy of giving oral or written warnings to officers for having, in
13 the aggregate, more than ten but less than twenty unexcused absences in a calendar
14 year, the Department needed to provide information that addressed each part of this
15 alleged unilateral change — i.e., disciplinary records prior to 2001 of officers having, in
16 the aggregate, more than ten but less than twenty unexcused absences in a calendar
17 year. The information provided by Department prior to November 1, 2003 either did
18 not cover calendar years prior to 2001, did not indicate whether officers had received
19 written or oral warnings for unexcused absences, or did not indicate if those warnings

²⁷ While the City never dropped its requirement for waivers in order to release district personnel files, we conclude that the only information from the district personnel files necessary to the Association's information requests are the disciplinary records that the City ultimately released. The Association no longer argues that it is entitled to these personnel files, and personnel files are specifically exempt from disclosure M.G.L. c. 4, § 7, Twenty-sixth (c).

1 were for the officers having, in the aggregate, more than ten but less than twenty unex-
2 cused absences in a calendar year. Not until the evening of October 31, 2003 and No-
3 vember 6, 2003 did the Department finally provide information that, in part, touched on
4 all aspects of the alleged unilateral change in sick leave disciplinary policy. Further-
5 more, it was not until November 18, 2003, that the City provided unambiguous evi-
6 dence addressing the alleged unilateral change in the Department's sick leave discipli-
7 nary practices.

8 The City's other arguments that the Association had its own avenues for procur-
9 ing the requested information and that the Association already knew from decisions of
10 the Civil Service Commission, provisions of the Agreement, and various statutory pro-
11 visions and Departmental policies that its case lacked merit either raises an issue pre-
12 viously decided, Greater Lawrence Sanitary District, 28 MLC 317, 319 (2002) (avail-
13 ability of information from another source is not a defense to providing requested in-
14 formation), citing Board of Trustees, 8 MLC 1139, 1143-4 (1981), or is inapposite to the
15 issue of an employer's obligation to provide employee organizations with requested in-
16 formation, City of Lynn, 27 MLC 60, 61 (2000) (the relevance of requested information
17 is determined by the circumstances that exist at the time of the request, not by the cir-
18 cumstances that exist at the time the right to the information is vindicated); Worcester
19 School Committee, 14 MLC 1682, 1684 (1988) (an employer has a duty to furnish rele-
20 vant and reasonably necessary information to an employee organization for the proc-
21 essing of any grievance that is not frivolous or improper); Boston School Committee, 8
22 MLC 1380, 1382 (1981) (the obligation to provide requested information extends to in-
23 formation relevant to a party's evaluation of the merits of a grievance and does not turn

1 on whether a grievance has actually been filed); Dracut School Committee, 13 MLC
2 1281, 1284-5 (1986) (an employer is obligated to provide relevant information rea-
3 sonably necessary to the bargaining representative to evaluate the merits of griev-
4 ances and manage the employee organization's resources responsibly). As the Board
5 has previously remarked in an earlier dispute between these same parties about a dif-
6 ferent information request: "It is possible for the Union to review the same information
7 and reach a different conclusion [than the City]." City of Boston, 22 MLC 1698, 1707
8 (1996).

9 In sum, for all of the reasons cited above, we find that the City's approximately
10 two year delay in providing the requested information was unreasonable.

11 Litigation Costs

12 The Association seeks to recover the costs it incurred in litigating the sick
13 leave grievance and Case No. MUP-02-3349. The Association contends that but for
14 the City's intransigence in providing the requested information, it would not have pro-
15 ceeded with these cases and that the Board's broad remedial powers to grant make
16 whole remedies under Section 11 of the Law should include its costs and attorneys
17 fees in the unique circumstances of this case.

18 We disagree. Since 1983, it has been well-established that the Board does not
19 have the statutory authority to award attorneys fees to parties except under very limited
20 circumstances. City of Boston v. Labor Relations Commission, 15 Mass. App. Ct. 122
21 (1983), citing Bournewood Hospital, inc. v. Massachusetts Commission against Dis-
22 crimination, 371 Mass. 303, 307-313 (1986). Even before the City of Boston decision,
23 the Board awarded attorneys fees in only rare circumstances. See City of Boston and

1 Local 285, 8 MLC 1113, 1116 (1981) and City of Quincy, 7 MLC 1081, aff'd. 7 MLC
2 1391 (1980) (hearing officer's award of attorneys' fees not appealed; award not found
3 to be an error of law). See also Boston Police Patrolmen's Association, 8 MLC 1993,
4 2003 (1982)("It must be taken to be a basic principle of both Commission and NLRB
5 practice that parties cannot, absent extraordinary circumstances, expect to recover
6 their costs and attorney's fees incurred in prosecuting the agency litigation.").

7 The Association acknowledges this long-standing precedent but asserts the
8 Board still has power, even under City of Boston v. Labor Relations Commission, su-
9 pra, to grant attorney's fees in certain narrowly defined instances described in Bourne-
10 wood Hospital, Inc. v. MCAD. One such instance is when the attorneys fees qualify "as
11 damages in certain circumstances," Bournewood Hospital, 371 Mass at 312, citing
12 Hartford Accident & Indemnity Co. v. Casassa (Hartford), 301 Mass. 246, 255-6 (1938)
13 (in indemnity action, implied by law or under contract, surety's recovery of bond amount
14 will include reasonable counsel fees). The Association argues that the award of at-
15 torneys fees in this case falls within this exception and further claims that the Board
16 has previously availed itself of this exception in two cases, Quincy City Employees Un-
17 ion, 14 MLC 1340 (1989) and City of Boston, 16 MLC 1653 (1990).

18 This argument is not persuasive for a number of reasons. First, a party's obli-
19 gation to bargain in good faith under the Law is far removed from a surety's indemnity
20 action relied on in Bournewood to indicate when "damages, in certain circumstances"
21 allows for recovery of attorney's fees. A surety's guarantee places the surety in privity
22 with a principal, and both are liable for the same indemnified obligations. See, gener-
23 ally, Fall River Housing Authority v. H.V. Collins Co., 414 Mass. 10, 13-14 (1992) (dis-

1 cussing when express indemnification can create a surety relationship as compared to
2 an implied right to contractual indemnity). Collective bargaining principles, on the other
3 hand, rest on the foundation of unions and management having separate and distinct
4 concerns and obligations. Moreover, in the Hartford decision, there was also a con-
5 tractual basis for the award of attorney fees as damages. In that case, the plaintiff
6 surety had entered into separate indemnity agreements with each of the two defen-
7 dants. In one of the agreements, the defendant had expressly agreed to indemnify the
8 plaintiff against all damages and costs, including attorney fees, that the surety sus-
9 tained in connection with having executed a bond. In the second agreement, the de-
10 fendant agreed to indemnify the insurer for all "loss, costs or damages", which the court
11 interpreted as including attorneys fees. 301 Mass. 254-255. In the instant matter, there
12 is no equivalent agreement that obliges the City to reimburse the Association for costs
13 incurred in connection with enforcing its obligations under its collective bargaining
14 agreement or the Law. Accordingly, the circumstances under which attorneys fees
15 were awarded as damages in the Hartford decision are materially different from the cir-
16 cumstances of this case.

17 Second, the Commission's decision in Quincy City Employees Union, supra is
18 distinguishable from the instant matter because the Quincy case involved a union's
19 breach of its duty of fair representation. The Supreme Judicial Court has analogized
20 such matters to "legal malpractice actions," holding unions liable for what the plaintiff
21 would have received had the union fulfilled its duty. Leahy v. Local 1526, American
22 Federation of State, County and Municipal Employees, 399 Mass. 341, 353-354
23 (1987). In Quincy City Employees Union and a number of other Board decisions, in-

1 cluding NAGE and Herman Moshkovitz, 20 MLC 1105, 1131, aff'd National Association
2 of Government Employees v. Labor Relations Commission, 38 Mass. App. Ct. 611,
3 613 (1995), that liability has included an award of attorneys fees in cases where, as
4 part of the Board's traditional make-whole remedy, the union has been ordered to take
5 all steps necessary to bring a member's grievance to arbitration, but it is no longer re-
6 alistic to expect the union to represent the grievant in arbitration.²⁸ In the absence of
7 similar appellate approval and in light of the fact that the City's relationship with, and
8 obligations, to the Association are materially different from the Association's relation-
9 ship with its membership, we decline to rely on Quincy City Employees Union or similar
10 cases as a basis to award attorneys fees here.

11 The hearing officer's decision in City of Boston, supra, is similarly inapposite.
12 First, it was decided by a hearing officer and not the Board. Therefore, it is only bind-
13 ing on the parties and does not constitute precedent for subsequent Board decisions.
14 Town of Ludlow, 17 MLC 1191, 1196 n.11 (1990).

15 Second, the City of Boston decision is factually distinguishable. There, the
16 hearing officer found that but for the City's illegal conduct, the union would not have
17 been forced to seek confirmation of an arbitrator's award in Superior Court. The hear-
18 ing officer reasoned that an award of attorney's fees therefore was required to make
19 the union whole. City of Boston, 16 MLC at 1658-1659. Here, the causal connection
20 between the City's delay in providing the information and the Association's decision to

²⁸ Under these circumstances, the award of attorneys fees is not necessarily a separate component of the damage award as the Association argues, but simply a means of implementing the Board's traditional order that the union take all steps necessary attempt to arbitrate the grievance.

1 file a sick leave grievance and unilateral change charge in the instant proceeding is far
2 less direct. What prompted the Association's grievance and unfair labor practice
3 charge was the Association's belief that the City had violated the collective bargaining
4 agreement and Section 10(a)(5) of the Law by disciplining bargaining unit members
5 who had taken unexcused sick leave for more than ten but less than twenty days. This
6 belief was prompted in part by Flippin's discipline and by the City's November 20, 2001
7 sick leave directive. Although the Association may not have continued to litigate the
8 prohibited practice charge and grievances had the City provided the historic discipli-
9 nary information earlier, it cannot be said that the City's delay in providing the informa-
10 tion forced the Association to file those claims in the first instance, particularly where at
11 least some portion of the grievances also concerned matters that were not resolved by
12 the City's provision of the information at issue here. See footnote 24, supra. Rather,
13 the City's delay in providing information directly caused the Association to file the in-
14 stant charge. The Association, however, is not seeking recover the attorney fees it in-
15 curred in litigating the instant proceeding. Accordingly, even assuming that the City of
16 Boston hearing officer decision could withstand appellate scrutiny, it is sufficiently dis-
17 tinguishable from the case at bar to render it inapposite.

18 The hearing officer in City of Boston also based his award of attorneys fees
19 upon what he deemed the City's "brazen disregard of its legal obligation." City of Bos-
20 ton, 16 MLC at 1659. Citing a number of NLRB and Supreme Court decisions,²⁹ the
21 Association similarly asserts that attorneys fees are appropriate in cases where the
22 employer has willfully violated its statutory obligation or otherwise acted egregiously or

1 in bad faith. The Association argues that the City's conduct in this case warrants appli-
2 cation of this precedent.

3 The City's delay in providing the requesting information was certainly unreason-
4 able and unacceptable, particularly with respect to its repeated failure to provide infor-
5 mation regarding oral and written reprimands for officers who had been absent for
6 more than ten days over a two year period, despite at least five requests to do so.
7 However, the Board has consistently held that the Appeals Court's City of Boston deci-
8 sion prevents it from awarding attorneys' fees, even in the face of what it has deemed
9 to be egregious, willful and repeated violations of the Law. See, e.g., High Education
10 Coordinating Council (HECC), 25 MLC 37 (1998). In the HECC decision, which was
11 also an information case, the Commission noted that it had previously issued eight de-
12 isions from 1994-1997 holding that HECC had violated Section 10(a)(5) of the Law by
13 not providing the union with relevant and reasonably necessary information. Charac-
14 terizing this pattern of misconduct as a "long-term, pervasive refusal to bargain in good
15 faith" that "has hindered the parties' bargaining relationship and threatens to undermine
16 the collective bargaining process contemplated by the Law," 25 MLC at 42, the Com-
17 mission nevertheless declined to award attorneys fees on the grounds that it lacked the
18 statutory basis to do so. Id. at n. 7, citing City of Boston, 15 Mass. App. Ct. at 124-
19 126. For all of the foregoing reasons, we feel similarly constrained by long-standing
20 precedent and the limits of the Board's statutory remedial authority. Accordingly, we
21 issue the following order:

²⁹ Harowe Servo Controls, 250 NLRB 958 (1980); F.D. Rich Co. v. Industrial Lumber Co., 417 U.S. 116, 129 (1974); Vaughn v. Atkinson, 369 U.S. 527 (1962).

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Conclusion

Based on the record before us, we conclude that the City violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of the Law unreasonably delaying providing relevant and reasonably necessary information when requested by the Association.

WHEREFORE, based on the foregoing, it is hereby ordered that the City shall:

1. Cease and desist from:

- a. Failing and refusing to bargain collectively in good faith with the Association by refusing to provide in a timely manner information that is relevant and reasonably necessary to the Union's role as exclusive bargaining representative.
- b. In any similar manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action that will effectuate the purposes of the Law:

- a. Provide requested information that is relevant and reasonably necessary to the Association's role as exclusive bargaining representative in a timely manner.
- b. Sign and post immediately in conspicuous places where employees usually congregate or where notices to employees are usually posted and maintain for a period of thirty (30) days thereafter copies of the attached Notice to Employees.
- c. Notify the Commission within ten (10) days after the date of service of this decision and order of the steps taken to comply with its terms.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD


MARJORIE F. WITTNER, CHAIR


ELIZABETH NEUMEIER, BOARD MEMBER

Appeal Rights

Pursuant to M.G.L. c.150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF
THE MASSACHUSETTS DIVISION OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth Employment Relations Board has determined that the City of Boston (City) violated Sections 10(a)(5) and, derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by refusing to provide in a timely manner information that is relevant and reasonably necessary to the Boston Police Patrolmen's Association, IUPA, Local 16807, AFL-CIO (Association) role as exclusive bargaining representative.

The City posts this Notice to Employees in compliance with the Commonwealth Employment Relations Board's Order.

WE WILL NOT fail to bargain in good faith with the Association by refusing to provide in a timely manner information that is relevant and reasonably necessary to the Association's role as the exclusive bargaining representative.

WE WILL NOT in any like manner, interfere with, restrain and coerce any employees in the exercise of their rights guaranteed under the Law.

WE WILL provide in a timely manner information that is relevant and reasonably to the Association's role as the exclusive bargaining representative.

City of Boston

Date