
CITY OF BOSTON AND LOCAL 600, GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, MUP-5574, MUP-5734 (3/25/88). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

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Commissioners Participating:

Paul T. Edgar, Chairman
Maria C. Walsh, Commissioner
Elizabeth K. Boyer, Commissioner

Appearances:

Richard W. Coleman, Esq. - Representing Local 600, Graphic
Communications International Union
John Marra, Esq. - Representing the City of Boston

**DECISION ON APPEAL OF
HEARING OFFICER'S DECISION**

The issues in this case are: whether the City of Boston (City) violated Sections 10(a)(5) and (1) of G.L.c.150E (the Law) by repudiating certain provisions of a collective bargaining agreement between the City and Local 600, Graphic Communications International Union (Union or Local 600) and/or by failing to provide certain information to the Union; and whether the City violated Section 10(a)(2) of the Law by remitting to a union other than Local 600 the union dues that had been deducted from the paychecks of two employees.

Statement of the Case

On June 27, 1986, a duly designated hearing officer of the Commission issued a decision holding that the collective bargaining agreement did not apply to the affected employees.¹ Accordingly, he dismissed the allegation that the City had repudiated its collective bargaining agreement with the Union. In accord with his analysis, the hearing officer dismissed the Section 10(a)(2) allegation contained in the Commission's complaint, finding that the City was under no contractual obligation to remit dues to the Union. The hearing officer also dismissed the allegation

¹The hearing officer's decision is reported at 13 MLC 1030.



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concerning the City's alleged failure to provide information to the Union, finding that the City had provided information, albeit inaccurate, to the Union. The sole violation found by the hearing officer was the City's failure to implement the collective bargaining agreement as to two employees, Ford and Stack, between July 1 and August 12, 1983.

The Union filed a timely notice of appeal of the hearing officer's decision pursuant to Commission Rules 456 CMR 13.13(2) and filed a supplementary statement on August 28, 1986, asserting, *inter alia*, that the hearing officer had failed to make numerous material factual findings. The Union additionally filed a motion to re-open the record coupled with affidavits in support thereof. On October 6, 1986, the City filed its own supplementary statement, a statement in opposition to the motion filed by the Union, its own motion to reconsider certain evidence excluded by the hearing officer, and a motion to strike certain evidence allowed in the record by the hearing officer. For the reasons discussed below, we affirm in part and reverse in part the hearing officer's decision.

FINDINGS OF FACT

As noted above, the Union filed an extensive supplementary statement asserting that the hearing officer had failed to make findings on numerous material facts. We have reviewed the entire record and hereby make the following factual findings.

1. Failure to Implement the Webb Agreement, Failure to Remit Dues to the Union

The employees of the City of Boston printing department are divided into at least four bargaining units represented by three unions: 1) Local 600, 2) Boston Typographical Union No. 13 (Local 13) and 3) Graphic Arts Union No. 67 (Local 67).

In early 1983, the City purchased and installed a Webb Press to be used in the City's printing department and created a new department, known as the Webb Department to operate it.

In January 1983, the City transferred Chris Carlsen, an Apprentice Bookbinder in the City's Printing Department and member of Local 600, to the Webb Department to assist in the assembly and eventually the operation of the Webb Press. In addition, in the spring of 1983, the City hired two new employees, Joseph Stack and John Ford, to operate the Webb Press. At the time all three employees were assigned to the Webb Department, each was told he would be a "Webb Operator." Ford and Stack executed payroll deduction forms when they were hired which authorized the City to deduct and remit union dues to Local 600. The forms were given to George Carlsen, Vice President of Local 600 (V.P. Carlsen). Chris Carlsen continued to have his dues deducted and remitted to Local 600 as he had in the past.

While the Webb equipment was being installed in early 1983, the City was engaged in negotiations with Local 600 concerning the bindery employees. At that time, V.P. Carlsen indicated that Local 600 wished to represent the Webb Press employees. On October 24, 1983, after having secured assurances from the other printing trades unions that they did not seek to represent the Webb Department employees, the City and Local 600 executed a collective bargaining agreement (hereinafter referred to as



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the Webb Agreement) effective July 1, 1983 through June 30, 1984 in which the City recognized Local 600,

as the exclusive bargaining agent with respect to rates of pay, hours of work and other conditions of employment for employees employed in the Administrative Services Department's Printing Plant Webb Department serving in the following classifications:

Foreman/Supervisor
Webb Operator

and excluding all other employees.

The Webb Agreement also incorporated many of the provisions of a pre-existing agreement between the City and Local 600 covering a larger unit of printing employees represented by Local 600 including, *inter alia*, provisions for payroll deduction of union dues and agency service fees, a grievance procedure, and pension and health insurance benefits.² The Webb Agreement established a separate wage rate for a Webb Operator, but did not establish a wage rate for the Foreman/Supervisor position.

As noted above, Chris Carlsen, Ford and Stack had worked in the Webb Department prior to the effective date of the Webb Agreement on July 1, 1983. Their terms of employment prior to July 1 had been as follows: Chris Carlsen was compensated at the wage rate for an Apprentice Bookbinder, his former position, which was covered by Local 600's larger unit agreement. Ford and Stack were apparently compensated as independent contractors.

On July 1, 1983, Stack and Ford were appointed to the position of Webb Operator. Their salary was set at \$404.60. The salary of a Webb Operator under the Webb Agreement was \$474.12. On July 6, 1983, Chris Carlsen's salary was increased from that of an Apprentice Bookbinder to that of a Bookbinder, which also paid less than the Webb Operator pay rate specified in the Webb Agreement.

On August 12, 1983, Ford and Stack, who were then holding the position of Webb Operator, were moved to a position called Offset Press and Camera Operator. This change is reflected in the City's payroll records. Their salaries remained \$404.60, which was equivalent to the salary, with a shift differential, for the position of Offset Pressman and Camera Operator under a collective bargaining agreement between Local 67 and the City covering certain other printing department employees. Both Ford and Stack continued to perform the functions of operating the Webb Press. They never performed the functions of an Offset Press and Camera Operator. The City purportedly changed Ford's and Stack's positions from Webb Operator to Offset Printer and Camera Operator because the title of Webb Operator was not yet

²Article III of the Webb Agreement, entitled "Payroll Deduction of Union Dues," provides that "...union dues shall be deducted weekly from the salary of each employee who executes and remits to the Municipal Employer a form of authorization for payroll deduction of union dues. Remittance of the aggregate amount of dues deducted shall be made to the Union's Treasurer..."



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in the City's compensation plan and had not been recognized by the Civil Service Commission as an official job title. According to Thomas Francis, the City's Supervisor of Personnel, the City was "fudging it" until the new title of Webb Operator was approved by the Civil Service Commission. Chris Carlsen continued to be paid at his Bookbinder rate.

For some time after July 1, 1983, no union dues deductions were made from either Stack's or Ford's pay despite the fact that both had executed payroll deduction forms.³ Instead, Stack and Ford paid their union dues directly to Local 600. Similarly, neither health insurance premiums nor pension contributions were being deducted from either employee's check. Instead, each man paid required amounts by submitting a personal check to the City. The City deducted union dues, insurance premiums, and pension contributions from Chris Carlsen's pay as it had done prior to his assignment to the Webb Department.

The City apparently was aware of the application of the Webb Agreement to the employees because the City referred to the Agreement in response to a grievance. Sometime between July 1983 and September 1984, Stack filed a grievance regarding elimination of the night shift. Superintendent Ray Marchand met with Stack regarding the grievance and pointed to a provision in Local 600's contract which authorized him to eliminate the shift. Nonetheless, since July 1, 1983, Chris Carlsen, Ford and Stack have worked in the Webb Department performing Webb Operator duties. None of the three employees has been paid in accordance with the provisions of the Webb Agreement.

In late December 1983 or early January 1984, the City transferred Joseph Frongillo to supervise the Webb Press employees. Frongillo had previously been employed by the City in the regular printing department and had been a member of the bargaining unit represented by Local 13. Shortly after Frongillo was appointed, V.P. Carlsen and David Hickey, counsel for the City, negotiated a wage rate for the Foreman/Supervisor position under the Webb Agreement. Despite this agreement, Frongillo has not been paid the wage rate agreed upon for the Webb Press Foreman/Supervisor position.

After October 1983, V.P. Carlsen had numerous discussions with various and ever-changing representatives of the City in an attempt to get the City to implement the terms of the Webb Agreement. In November 1983 Richard Ong, then the attorney for the City, told V.P. Carlsen that the employees were not receiving their proper wages as Webb Operators because of a problem with putting the titles into the computer system. Later, Anna McKeon, a City representative, told V.P. Carlsen that there was a problem with the Foreman/Supervisor position held by Frongillo because no wage rate had yet been negotiated. In November or December 1983, another City attorney, Eric Nadworny, contacted V.P. Carlsen in order to arrange a meeting to resolve the problem in implementing the Webb Agreement. When V.P. Carlsen appeared at the meeting, he was informed that Nadworny had left the City's employ and was

³There was no evidence concerning whether the authorization forms were received by representatives of the City.



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told to contact City labor relations representative Chester Broderick. In January 1984, Chester Broderick assured V.P. Carlsen that there were no problems in implementing the Webb Agreement. In February 1984, V.P. Carlsen was referred to City attorney James Cox, who also assured him there was no problem with implementation of the Webb Agreement. In March 1984, V.P. Carlsen was told to contact City attorney David Hickey. According to V.P. Carlsen, Hickey told him there was no problem with the contract but the City still had problems with computerization. Hickey later discovered that the four employees had not been formally appointed to Webb Press positions and that the Webb Press positions were not part of the City's compensation plan.

In March of 1984, V.P. Carlsen met with Ray Pizzaro, Deputy Superintendent of the City's printing office, who informed him that the Webb Agreement had not been implemented because of a problem with a night shift differential for Webb employees which had not been included in the Webb Agreement.⁴

On February 24, 1984, Mayor Raymond Flynn approved a retroactive amendment to the City's compensation plan to add the titles of Webb Operator and Working Foreman/Supervisor of the Webb Offset Press at the wages specified in the Webb Agreement, effective July 1, 1983.

On March 29, 1984, the City, through its then Supervisor of Personnel Francis J. Doyle, requested that the Massachusetts Department of Personnel Administration add the new titles of Webb Operator and Working Foreman/Supervisor of the Webb Offset Press to the City's Civil Service classification plan.

The City's written application for Civil Service approval of the new job titles stated in pertinent part:

Three employees began performing the new duties and responsibilities particular to the operation of a Webb offset press after undergoing an extensive six-month training program conducted by the manufacturer. While these individuals run the Webb offset press exclusively and are the only employees assigned to these duties, one is misclassified as a Bookbinder and the other two as Offset Pressmen and Camera Operator. With the creation of the new classification of Webb Offset Press Operator, the positions

⁴At various points during the hearing in this matter, the parties referred to a "night shift differential problem" for Webb press employees. The record is vague as to the exact nature of the problem, when it was discovered, and whether it was remedied. Neither the Webb Agreement nor Local 600's contract with the City for the larger unit appears to contain a provision for a night shift differential. Despite this, the City has apparently paid approximately \$20.00 as a night shift differential to Webb employees as well as to printing employees represented by Local 600 in the larger unit who worked at night.



necessary for the operation of the Webb offset press will be properly and descriptively classified.

The employees who operate the Webb offset press are represented by a new union and, under a contract with that union, are paid a rate of compensation commensurate with that paid at other printing locations. Creation of the new classification of Webb Offset Press Operator would place these positions within the jurisdiction of this union. Continued use of existing titles for these positions will create jurisdictional problems as three unions would represent these employees.

In March 1984, V.P. Carlsen met with Printing Superintendent Joseph Toto and Ray Pizzaro, Deputy Director of Personnel, at the City's printing office. Pizzaro said the Webb contract hadn't been implemented because of a problem with the night shift differential. Pizzaro asked if the Webb press jobs had been posted. V.P. Carlsen responded that they had not. Pizzaro asked V.P. Carlsen if he had any objection to posting the jobs. V.P. Carlsen stated that he objected to the posting because the four employees had already had the jobs for a year and there were no other openings. A few days later, Pizzaro told V.P. Carlsen that he was going to post the jobs. According to V.P. Carlsen, both Pizzaro and Hickey assured him that the jobs would be filled from within. Hickey did not recall Pizzaro assuring V.P. Carlsen that the four individuals would get the jobs.

On April 5, 1984, the Union filed charge No. MUP-5574 which alleged that the City had failed and refused to implement the Webb Agreement.

On April 30, 1984, the Webb Press positions were posted. Chris Carlsen, Ford, Stack and Frongillo applied for the jobs as did other individuals. The four employees were interviewed, and subsequently all four received letters of appointment from Superintendent Toto. Nevertheless, all four employees continued to be paid at the same rate as they each previously had received, and none of the four received the wage rates specified under the Webb Agreement.

In late April of 1984, Hickey and various representatives of the City met with V.P. Carlsen and other Union representatives to attempt to resolve the charge No. MUP-5574. As a result, on May 31, 1984, the Union and the City entered into the following settlement agreement:⁵

The parties to this agreement, the City of Boston (hereinafter "the City") and Graphic Communications International Union, Local #600 (hereinafter "the Union"), agree to the following in complete

⁵In its appeal, the City filed a Motion to Strike certain evidence concerning the settlement agreement, which had been admitted into evidence by the hearing officer over the City's objection. The City urges us to exclude this evidence because it is "privileged." While we agree with the City that offers of settlement are generally regarded as privileged, the above document is a settlement agreement, not an offer to settle. Accordingly, it was appropriately admitted into evidence, and we deny the City's Motion to Strike.



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and final resolution of the charges before the State Labor Relations Commission, Case No. MUP-5574:

- (1) The Union agrees to immediately withdraw its charge, MUP-5574, presently before the State Labor Relations Commission.
- (2) Webb Operators and the Working Foreman/Supervisor in the Webb Department shall receive a lump-sum payment, by June 15, 1984, of the difference in weekly rates, not including any night shift differential, due and unpaid since July 1, 1983.
- (3) Interest, in the amount of 8% annually, will be paid on the lump-sum amounts described in #(2) which were due after January 1, 1984.
- (4) Webb Operators and the Working Foreman/Supervisor will begin to receive the weekly rates set out in the 1983-1984 Agreement by June 1, 1984, but will not receive any night shift differential from that time until expiration of the 1983-1984 Agreement.
- (5) For the Purpose of bargaining a successor Agreement, Webb Operators and the Working Foreman/Supervisor in the Webb Press Department, will be considered entitled to the \$20.00 night shift differential for working the 3:45 P.M. through 11:00 P.M. work shift in the Webb Department.

The parties agree that this is a comprehensive settlement of all issues raised in MUP-5574 and is contingent on acceptance of the Agreement by the State Labor Relations Commission as the basis for withdrawal of the Union's charges in MUP-5574.

The above settlement agreement was signed by David Hickey and V.P. Carlsen. There was a signature line for "Labor Relations Commission" which was left unsigned.⁶

On or about June 5, 1984, the City adjusted all three Webb Operators' compensation for the period from August 12, 1983 to May 31, 1984 and paid each the difference between what each had been paid and what each would have been paid as Webb Offset Press Operator under the Webb Agreement. Thus, each of the Webb Operators received ten months of retroactive wages at the rates specified in the Webb Agreement.⁷ In addition, the City paid Frongillo retroactive wages from the date he was transferred until May 31, 1984 at the rate negotiated by the parties for the Webb Working Foreman position.

After June 1984, however, the City did not fulfill the fourth paragraph of the settlement agreement. It did not start paying the four employees the rates set out in the Webb Agreement, despite the fact that all four employees continued

⁶David Hickey testified that the reason for paying the employees retroactively was because the four employees had been working out of classification and the City was paying them pursuant to the principle of "quantum meruit."

⁷When V.P. Carlsen discovered that the City had failed to make the wage adjustment retroactive to July 1 as provided for under the settlement, he questioned Hickey about the discrepancy. Hickey stated that the pay adjustments began on August 12 because the Webb employees were provisional employees prior to that date.

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to perform Webb Press duties. On June 27, 1984, counsel for the Union complained to the Commission that the City had not complied with the settlement agreement in case MUP-5574 and urged the Commission to proceed with the charge. Following an investigation, the Commission issued a complaint in Case No. MUP-5574, on August 8, 1984, alleging that the City had failed to implement the wage provisions of the 1983-84 Webb Agreement and also alleging that the City had failed to provide the Union with information regarding the status of the Webb Press positions.

On June 30, 1984, the Webb Agreement expired. Representatives of both the Union and the City held four negotiations sessions from May 31, 1984 through September 8, 1984. As of the final date of hearing in this case, the parties had not reached an agreement on a successor contract. In one meeting held in August of 1984, V.P. Carlsen complained to Hickey that Ford's and Stack's Local 600 union dues were not being deducted from the two employees' paychecks, despite the fact that both employees had signed authorizations for such deductions. In addition, V.P. Carlsen pointed out that the City was not deducting pension and health insurance payments from either Ford's or Stack's pay. During the negotiating meetings between May and September 1984, Hickey never told Local 600 that either Local 67 or Local 13 claimed to represent the Webb Press employees.

During the summer of 1984, the City was also bargaining successor contracts with Local 13 and Local 67. According to Hickey, both of the other unions expressed interest in the Webb positions which had been posted. Patrick McDonough, a steward for Local 13, filed a complaint with the Civil Service Commission on June 14, 1984, concerning the propriety of the City's posting of the Webb positions and of the City's decision to appoint Frongillo, Carlsen, Ford and Stack to the Webb positions. In addition, Thomas Smith, business representative for Local 67, filed a grievance and a Civil Service complaint requesting reasons why two Local 67 employees were not appointed to the Webb positions.⁸

Because the City did not remedy its failure to deduct Stack's and Ford's union dues, medical insurance and pension contributions from their paychecks, the

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Carlsen objected, stating that all other provisional employees of the City had received the same wages as regular employees. The City never remedied this six-week discrepancy.

⁸ At the hearing in this matter, the City offered into evidence copies of grievances and Civil Service complaints filed by Local 13 and Local 67. The Union objected and the hearing officer excluded these exhibits as irrelevant. The City did not pursue an interlocutory appeal of the hearing officer's ruling pursuant to Commission Rule 456 CMR 13.02(4). On appeal, the City filed a motion to reopen the record to include these exhibits, which we deny. The mere fact that other unions contested the filling of the Webb positions does not constitute a defense either to the City's failure to implement the Webb Agreement or to its remittance of deductions from Ford's and Stack's paychecks to a union other than Local 600. Nor does it excuse the City's failure to provide Local 600 with information regarding the posting of the positions.



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Union filed charge No. MUP-5734 with the Commission on September 24, 1984. That charge alleged that the City had both failed to deduct contributions to the City's pension and health insurance plans from Ford's and Stack's paychecks and had refused to honor the employees' requests to have their dues deducted and remitted to Local 600. Shortly after the charge was filed, the City began deducting pension and health insurance contributions from Ford's and Stack's paychecks. In addition, in the fall of 1984, the City began deducting money from Ford's and Stack's checks but, instead of remitting the amount as dues to Local 600, the City remitted the money to Local 67. Neither Ford nor Stack had signed an authorization for dues deductions to Local 67. At the same time, the City was remitting Frongillo's dues deductions to Local 13 rather than the Union. On September 13, 1984, Ford and Stack filed grievances protesting the remittance of their dues to Local 67. The City denied the grievance on the grounds that Ford and Stack held the position of Offset Pressman and Camera Operator, which was under Local 67's jurisdiction. Nevertheless, the City agreed to hold the dues monies in escrow pending a determination by the Commission.

An investigation of charge MUP-5734 was conducted on November 8, 1984. Hickey appeared for the City and asserted that Local 67 and Local 13 had claimed jurisdiction over the employees in question. According to V.P. Carlsen, Hickey stated for the first time at the investigation that the Webb Agreement could not be implemented because the Civil Service Commission had not approved the Webb Department titles. Hickey claims that he had informed the Union of this problem in June or July of 1984, a year after the Webb Agreement was executed.

On January 24, 1985, the Commission issued a complaint in Case No. MUP-5734, alleging that the City had violated Section 10(a)(5) of the Law by failing to implement the health insurance, pension, and dues deduction provisions of the collective bargaining agreement (Webb Agreement) as to Ford and Stack. The complaint also alleged that the City had violated Section 10(a)(2) of the Law by refusing to remit Ford's and Stack's dues to Local 600 and instead remitting their dues to Local 67. The complaint in MUP-5734 was consolidated with the earlier complaint in MUP-5574 for hearing.

In December 1984, the Civil Service Commission approved the Webb Department titles and job descriptions. Despite this approval, the City apparently had not yet implemented the Webb Agreement at the time this case was heard. On April 30, 1985, the final day of hearing in this case, Thomas Francis testified that the City had not yet decided whether to fill the Webb positions.⁹

2. Failure To Provide Information

As noted above, the complaint in Case No. MUP-5574 further alleged that the City failed to inform the Union about the status of the Webb Press positions after the April 1984 posting of the positions. The hearing officer dismissed this portion of the Complaint, stating:

⁹In its appeal, the Union filed a Motion to Reopen the Record to include evidence of events which occurred subsequent to the close of hearing, on the ground that the evidence would further corroborate its contention that the Webb Agreement

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Local 600 repeatedly requested information on the status of the Webb Press positions, and the City repeatedly provided the union with answers. Admittedly, the union received varying answers from the different City representatives that it spoke with; however there is no evidence that this was the result of any City attempt to misinform the union. Rather, the City's differing answers resulted from the City's inability to resolve the numerous problems arising from its mistakes in the creation of the positions. As with the City's failure to adjust the employees' titles, the record demonstrates not clever manipulation and avoidance of the City's bargaining obligations, but simply the City's inept handling of the situation. The City did provide the union with whatever information the City had, therefore the City did not violate G.L. c.150E, Section 10(a)(5). 13 MLC at 1037.

The specific facts relating to the Union's requests for information regarding the April 1984 posting of the Webb Press positions are as follows.

In the spring of 1984, the Union through V.P. Carlsen requested information regarding the posting of the positions, copies of the postings, a list of those who had applied for the positions and a list of those who were selected for the positions. Toto later sent out notices of appointment to Chris Carlsen, Ford, Stack and Frongillo. The City never gave V.P. Carlsen copies of the posting or the names of those who applied for the Webb positions.

OPINION

The central issue posed by this case is whether the City violated Sections 10(a)(5) and (1) of the Law by failing to implement certain provisions of the Webb Agreement. The hearing officer concluded that the Webb Agreement only applied to employees who held the specific titles enumerated in the recognition language of the Webb Agreement.¹⁰ In light of the facts found above, we reverse that portion of the hearing officer's decision.

It is well established that an employer who executes a collective bargaining agreement is obligated to implement its provisions. County of Suffolk, 8 MLC 1573, 1577-78 (1981), aff'd in relevant part, County of Suffolk v. Labor Relations Commission, 15 Mass. App. Ct. 127 (1983). Failure to do so constitutes a repudiation

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covered the four employees performing Webb Department functions. We need not decide this motion since the record contains sufficient evidence to permit our determination of the issues in the case. Moreover, in view of our findings herein, the Union is not prejudiced by the exclusion of this evidence.

¹⁰ In accord with this analysis, the hearing officer found that the City's sole violation was its failure to apply the terms of the Webb Agreement to Ford and Stack during the period from July 1, 1983 to August 12, 1983, when those two employees held the specific Webb Operator job title.



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of the terms of the agreement, which constitutes refusal to bargain in violation of Sections 10(a)(5) and (1) of the Law. City of Chelsea, 13 MLC 1144, 1149 (1986); New Bedford School Committee, 13 MLC 1009, 1014 (1986).

In the present case, the facts demonstrate that at the time the City and the Union entered into the Webb Agreement, both parties envisioned and intended that the Agreement would apply to the individuals performing Webb Press duties. Ford and Stack were initially hired in the position of Webb Operator on July 1, 1983 and consistently performed the duties of that position. The Webb Agreement, by its terms, was retroactively effective to July 1, 1983 and covered employees employed in the City's Webb Department serving in the classifications of Foreman/Supervisor and Webb Operator. The City subsequently amended its compensation plan and its Civil Service classification plan to add the titles of Foreman/Supervisor and Webb Operator retroactive to July 1, 1983. Throughout 1983 and 1984, various representatives of the City continuously assured V.P. Carlsen that the City would implement the Webb Agreement and compensate Chris Carlsen, Ford, Stack, and Frongillo in accordance with its terms. At no time during these discussions did any representative of the City claim that the Webb Agreement did not apply to the four employees. In its March 1984 application for Civil Service approval of the Webb Department job titles, the City acknowledged that the four employees who were performing the Webb press duties were "under a contract" with a "new union," and were "misclassified" as "Bookbinder and Offset Press and Camera Operator." Moreover, in April of 1984, the City entered into a settlement agreement with Local 600 which explicitly acknowledged the applicability of the Webb Agreement to these four employees retroactive to July 1, 1983.

It is apparent from the foregoing that the City and Local 600 intended the recognition language in the Webb Agreement to apply to the four employees performing the Webb Press duties and anticipated that these four employees would be accorded the Webb job titles. Although two of the Employees were never given the formal titles which corresponded with the jobs they were performing, and the other two were accorded such titles for only a brief period of time, the evidence does not establish that the applicability of the Webb Agreement depended upon their holding the formal titles. Rather, the parties' conduct both before and after entering into the Webb Agreement evidences their clear intention that the Agreement would apply to the four employees who were performing Webb Press functions. The City may not now attempt to evade its obligations under that Agreement by belatedly claiming that these employees do not hold the formal Webb job titles because they are not covered by the Agreement.¹¹

In addition, we find no merit in the City's claim that it was excused from implementing its Agreement with Local 600 because other unions questioned the appointments of Frongillo, Carlsen, Stack and Ford to the Webb positions following the job postings in April of 1984. The questions of other unions concerning the

¹¹The fact that the employees lacked formal Civil Service job titles has no bearing on the City's obligations under the collective bargaining agreement.



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filling of the Webb positions does not relieve the City of its obligations to Local 600 under the Webb Agreement.

We therefore conclude that the City's failure to implement the wage terms of the Webb Agreement by failing to pay the employees in accordance with the Agreement constitutes a refusal to bargain in good faith in violation of Sections 10(a) (5) and (1) of the Law.

We next turn to the allegation that the City violated Section 10(a)(2) of the Law by failing to remit Ford and Stack's dues to Local 600 after each had executed a dues deduction authorization form for Local 600. The hearing officer erroneously concluded that Ford and Stack were not represented by Local 600 or covered under the Webb Agreement and dismissed the 10(a)(2) allegations on that ground. We concur with the hearing officer's dismissal of the allegation that the City violated Section 10(a)(2) by refusing to deduct the employees' dues and remit them to Local 600, but we do so for different reasons. An employer is obligated to remit to a union employee dues payments which are deducted pursuant to written employee authorization. The failure to do so constitutes interference with the administration of the union in violation of Section 10(a)(2) of the Law.¹² New Bedford School Committee, 13 MLC 1009, 1016 (1986); Whittier Regional School Committee, 13 MLC 1325, 1333 (1986). See also California Blowpipe and Steel Co., Inc., 218 NLRB 736 (1975), enf'd 93 LRRM 2842 (D.C. Cir. 1976); Albert Van Luit & Co., 234 NLRB 1087 (1978), enf'd 597 F.2d 681, 101 LRRM 2734 (1979); King Electric Manufacturers, 229 NLRB 615, 96 LRRM 1370 (1977). In this case, however, there was no evidence that the City had received the employees' authorization forms authorizing dues deductions for Local 600. In view of the City's contention that the authorization forms were not received by the City, this evidence is crucial to finding that the City unlawfully refused to deduct dues and remit them to Local 600 in violation of Section 10(a)(2). Because no evidence was submitted to establish that the City had received the authorization forms,¹³ the allegation must be dismissed. For the same reasons, we dismiss the allegation that the Employer failed and refused to implement the "Payroll Deduction of Union Dues" provision of the Webb Agreement in violation of Section 10(a)(5) of the Law. Such a deduction could only be made upon receipt of a written authorization from the employee. In the absence of evidence that the City received the authorization form, no violation has been proven.

Nonetheless, we must also consider whether the City violated Section 10(a)(2) of the Law by deducting money from the paychecks of Ford and Stack without authorization in the fall of 1984 and remitting the amounts to Local 67. To establish a

¹²As with the "failure to implement" violation, the fact that another union claimed jurisdiction over Ford's and Stack's jobs does not relieve the City of its obligation to remit dues to Local 600 as the exclusive representative of the job classifications held by the employees.

¹³The evidence established that the employees had signed authorization forms and that V.P. Carlsen had custody of the forms at some time.



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violation of Section 10(a)(2), it must be shown that the employer's conduct significantly interfered with the existence and administration of a union. The most common way that employer conduct violates this provision is either by depriving a union of an economic benefit, New Bedford School Committee, supra at 1016, or by granting an undeserved economic advantage to a union. See General Instrument Corporation, 262 NLRB 1178 (1982). Here, the unauthorized deductions of money from employees represented by Local 600 and remission of that money to Local 67 directly affected the financial administration of Local 67 by paying money to Local 67 that was not due to that union. Accordingly, the City's conduct violated Section 10(a)(2) of the Law.

We also find that the City failed and refused to implement the provisions of the Webb Agreement by not deducting health insurance premiums or retirement contributions from the paychecks of Ford and Stack in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1). The obligation to make such deductions was admitted by the City in its Supplementary Statement. Although the failure was characterized by the City as an "oversight," we do not excuse the City from failing to implement the health insurance and retirement benefit provisions of the Webb Agreement. Accordingly, we find that the City violated Sections 10(a)(5) and (1) of the Law by failing to make health insurance and retirement contribution deductions from the paychecks of Ford and Stack.

The only remaining issue is whether the City violated Sections 10(a)(5) and (1) of the Law by refusing to provide certain information requested by the Union regarding the April 1984 posting of the Webb positions. In discussing this allegation, the hearing officer suggests that an employer may satisfy its statutory duty to provide information when it unintentionally supplies erroneous or inaccurate information to a union. We reject this suggestion. It is incumbent upon an employer to provide correct and accurate information in response to a union's request. An employer will be held liable for providing erroneous or inaccurate information regardless of the employer's actual intent.

In this case, we find that Local 600 requested information regarding the posting of the Webb positions, copies of the posting, a list of applicants for the positions and a list of those who were selected. This information was necessary for and reasonably relevant to the Union's performance of its duties as exclusive bargaining representative for the Webb Press positions. See Boston School Committee, 10 MLC 1501, 1513 (1984) and cases cited therein. There is no dispute that the City never gave the Union copies of the posting or the names of those who applied for the Webb positions. Such information was available to the City and could have been supplied. We therefore conclude that the City violated Sections 10(a)(5) and (1) of the Law by failing to supply the requested information to the Union.

While we find the City's refusal to provide information violated the Law, this violation appears to be a technical one in light of the events subsequent to the Union's information request. The Union's need for the requested information became moot when the City appointed Carlsen, Ford, Stack, and Frongillo to the Webb positions. Accordingly, we limit our remedy regarding this violation to a cease and desist order coupled with a notice posting.



CONCLUSION

In light of our findings and for the reasons set forth above, we conclude that the City violated Sections 10(a)(5) and (1) of the Law by failing and refusing to implement the wage provisions of the Webb Agreement and by failing and refusing to deduct from Ford's and Stack's paychecks the required health insurance premiums and pension contributions pursuant to the terms of the Webb Agreement. We also find that the City violated Sections 10(a)(2) and (1) of the Law by deducting money from the paychecks of Ford and Stack without authorization and remitting it to Local 67. Finally, we hold that the City violated Sections 10(a)(5) and (1) of the Law by failing to provide the Union with necessary and reasonably relevant information.

ORDER

WHEREFORE, on the basis of the foregoing, IT IS HEREBY ORDERED that the City of Boston shall:

1. Cease and desist from:

- a) Refusing to bargain in good faith with Local 600, Graphic Communications International Union by refusing to abide by the terms including the wage, health insurance and pension benefits terms, of the Webb Agreement entered into with Local 600 effective July 1, 1983.
- b) Refusing to provide Local 600 with information necessary and relevant to its functions as the exclusive collective bargaining representative of certain employees of the Webb Press Department.
- c) Interfering with the existence and administration of a union by paying money deducted without authorization from the pay of Ford and Stack to a union other than Local 600.
- d) In any like or similar manner, interfering with, restraining or coercing employees in the exercise of their rights under the Law.

2. Take the following action which will effectuate the policies of the Law:

- a) Take all appropriate steps to implement the wage, health insurance and pension benefit provisions of the Webb Agreement effective from July 1, 1983 to June 30, 1984.
- b) Make whole with interest¹ all employees covered by the Webb Agreement for the loss of wages suffered as a result of the City's failure to implement the wage provisions of the Webb Agreement.
- c) Make whole with interest Ford and Stack for all rights and benefits lost as a result of the City's failure to deduct from their pay the health insurance premiums and pension contributions required pursuant to the terms of the Webb Agreement, including compensation for any
(1, see page 1620)



City of Boston and Local 600, Graphic Communications International Union, 14 MLC 1606

excess sums paid by Ford and Stack for health insurance or pension benefits as a result of the City's action.

d) Make whole with interest Ford and Stack for the loss of monies occasioned by the City's unauthorized deduction of money from their pay and remission of such money to any union other than Local 600.

e) Post in all conspicuous places where employees usually congregate and where notices are usually posted and maintain for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.

f) Notify the Commission, in writing, within thirty (30) days of service of this order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER

1 (from Page 1619)

Interest under this Order is to be computed in accordance with the formula described by the Commission in Everett School Committee, 10 MLC 1609 (1984).



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**NOTICE TO EMPLOYEES
POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

The Labor Relations Commission has determined that the City of Boston violated Sections 10(a)(1)(2) and (5) of Massachusetts Law Chapter 150E (the Law) by failing to implement the wage, health insurance and pension benefit provisions of the Webb collective bargaining agreement (Webb Agreement) reached with Local 600, Graphic Communications International Union by making unauthorized monetary deductions from employees represented by Local 600 and remitting such deductions to another union, and by refusing to supply necessary and relevant information to Local 600. In compliance with the Commission's order:

WE WILL NOT fail to implement the wage, health insurance and pension benefit provisions of the Webb Agreement reached with Local 600, Graphic Communications International Union, or in any like way interfere with, restrain or coerce employees in the exercise of their rights under the Law.

WE WILL NOT interfere with, restrain or coerce employees in the exercise of their rights under the Law or interfere with the existence and administration of any union by deducting money from employees without authorization and remitting such money to a union other than the collective bargaining representative designated by the employees to receive the deductions.

WE WILL NOT refuse to provide information to Local 600 which is necessary and relevant to Local 600's function as exclusive representative of certain Webb Press Department employees for the purposes of collective bargaining.

WE WILL take all appropriate steps to comply with the terms of the Webb Agreement relating to rates of pay, wages, health insurance and pension benefits or other conditions of employment.

WE WILL MAKE whole certain employees for the loss of earnings or any other loss of rights or benefits suffered as a result of the City's failure to implement certain provisions of the Webb Agreement.

City of Boston



