In the Matter of BOSTON PUBLIC SCHOOL COMMITTEE

and

BOSTON PUBLIC SCHOOL BUILDINGS CUSTODIANS' ASSOCIATION

Case Nos. MUP-1410 and MUP-1412

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| *52.33* | *rights under expired contract* |
| *65.9* | *other interference with union* |
| *67.3* | *furnishing information* |

*August 26, 1997*
*Robert C. Dumont, Chairman*
*William J. Dalton, Commissioner*

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| *Joan Brennick, Esq.* | *Representing Boston Public School Committee* |
| *David Jenkins, Esq.* | *Representing Boston Public School Buildings Custodians' Association* |

## DECISION[1]

### Statement of the Case

On December 18 and 21, 1995, the Boston Public School Buildings Custodians' Association (Association) filed charges with the Labor Relations Commission (Commission) alleging that the Boston Public School Committee (Employer or School Committee) engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of Massachusetts General Laws Chapter 150E (the Law). Following an investigation, the Commission issued its own two-count Complaint of Prohibited Practice on August 2, 1996. The Commission alleged that the School Committee had violated Sections 10(a)(5) and (1) of the Law by failing to furnish the Union with information relevant and reasonably necessary for the Union to execute its duties as collective bargaining representative.[2] Pursuant to notice, an Administrative Law Judge held a formal hearing on January 9, 1997. All parties had a full opportunity to be heard, to examine witnesses, and to introduce evidence. The parties submitted post-hearing briefs on February 21, 1997. The Administrative Law Judge issued Recommended Findings of Fact on July 16, 1997, and the Association and the School Committee filed challenges to those recommended findings on March 24 and April 7, 1997, respectively.

1. Pursuant to 456 CMR 13.02 (1), the Commission designated this case as one in which the Commission issues a decision in the first instance.

2. The allegations in both Count I and II pertain to information related to grievances. The grievance in Count I was filed on behalf of Thomas Catterson and the grievance in Count II was filed on behalf of Donald Mullen.

## Findings of Fact[3]

Paul Jelley (Jelley) has been employed by the Boston Public School Department (department) as a custodian for twenty-eight (28) years and has been a senior building custodian since 1972. Jelley is also president of the Association, which represents approximately 300 junior and senior building custodians employed by the department. As president, Jelley attends disciplinary hearings, processes grievances and manages the day to day operations of the Association.

Paul McNeil (McNeil) has been employed by the department for thirty-nine (39) years and has been the assistant director of facilities management since 1988. McNeil supervises the junior and senior custodians and manages the building services department and maintenance shop. He also conducts disciplinary hearings and Step I grievance hearings, but he does not usually make tape recordings of either of those hearings. McNeil has the authority to discipline those employees he supervises and may impose discipline up to and including a five-day suspension.

The Association and the School Committee were parties to a collective bargaining agreement effective September 1, 1989 to August 31, 1992.[4] In May 1994, that agreement was terminated at the request of the School Committee. The parties began negotiations for a successor agreement in 1993 that continued until December 30, 1995. The School Committee's final offer, dated January 3, 1996, applied retroactively to salary and wage rates but did not contain language indicating its duration nor did it change any provisions of the original duration clause contained in the 1989-92 agreement.[5] The School Committee subsequently notified the Union on April 16, 1996 that it would implement its final offer on May 8, 1996.

## Request for Information Concerning the Catterson Grievance

Thomas Catterson (Catterson) was the night senior building custodian at the Umana/Barnes School in East Boston and a bargaining unit member. Paul Wood (Wood), the night manager for the Umana/Barnes building and Catterson's supervisor, toured the school building on numerous occasions and found it dirty. He concluded that the night crew, supervised by Catterson, was not performing adequately. Catterson also failed to provide him with requested work schedules of the night crew. The principal of the school agreed that the building was not clean and other building custodians were presumed to have been witnesses to the conditions of the school. McNeil also visited the school and witnessed those conditions. On March 31, 1995, McNeil notified Catterson that he would conduct a hearing regarding Catterson's job performance on April 6, 1995. On April 19, 1995, McNeil notified Catterson that he was suspended without pay for two days pursuant to the April 6 disciplinary hearing.[6] The principal did not attend the hearing nor did the department notify the Association that McNeil witnessed the conditions of the building and had investigated those conditions. McNeil did not record that hearing on tape nor did he create any witness lists or rely on any witness statements for that hearing. Catterson served that two-day suspension on April 26 and May 2, 1995 and subsequently grieved that disciplinary action in accordance with Article V of the collective bargaining agreement.[7] On May 3, 1995, the Association filed Catterson's grievance at Step I and the School Committee subsequently denied it on May 8, 1995.[8] On May 15, 1995, the Association filed the grievance at Step II, and the School Committee denied it on June 9, 1995. On July 11, 1995, the Association filed a demand for arbitration on behalf of Catterson.

On August 7, 1995, the Association sent a request for information to Haidee Morris, legal counsel for the School Committee, that read, in part:

> Please accept this correspondence as the Association's request for information with respect to the matters arising out of this grievance. We would, accordingly, request to be provided with the following information:
>
> 1. A full and complete copy of any and all witness statements in connection with the allegations of misconduct forming the basis of discipline imposed on Mr. Catterson.
>
> 2. Copies of any and all transcripts and/or tape recordings of any hearings conducted in connection with this matter.
>
> 3 Copies of any and all other documents that pertain in any way to the discipline imposed on Mr. Catterson.
>
> 4. The names of all witnesses expected to be called at the arbitration of this case.

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3. The Commission's jurisdiction in this matter is uncontested.

4. That agreement contained a duration clause that provided, in part:

> This Agreement...shall continue in full force and effect until August 31, 1992. Should negotiations be not concluded on or after August 31, 1992, then the provisions of this Agreement shall continue in effect unless either party in writing notifies the other party that it wishes to terminate the said Agreement and gives the other party thirty (30) days notice of its intention.

5. The Association has filed a separate unfair labor practice challenging the validity of that final offer because it failed to include a duration clause.

6. That notice read, in part:

> On April 6, 1995 a hearing was held ... to discuss your job performance. Attending the hearing were Mr. Paul E. McNeil, Mr. Charles Cardillo and Mr. Paul Wood for Facilities, Mr. Dorian Howard and Mr. Kevin Smith for the Association.
>
> Mr. Catterson, you are hereby issued a two-day suspension without pay. The days of suspension shall be April 26 and May 2, 1995.
>
> *Improvement Plan*
>
> You must improve your work performance.
>
> You must improve your supervisory skills.
>
> You must follow the direction of the Zone Manger.

7. That grievance procedure provides in part:

> **Article V**
>
> *Arbitration*
>
> A grievance which was not resolved at Step 2 under the grievance procedure may be submitted by the Association to Arbitration...

8. The parties have stipulated that, in May 1995, at the time of the Step I grievance, the collective bargaining agreement had been terminated.

> 5. Copies of any and all documents that the School Committee intends to introduce at the hearing on this matter.
>
> I request that you provide us with the requested information by the close of business on September 15, 1995.[9]

On January 11, 1996, the School Committee sent the following response:

> 1. Without waiving its position that it does not have an obligation to provide witness statements, there were no written witness statements available and/or relied upon in connection with the discipline imposed on Mr. Catterson.
>
> 2. The hearing held in connection with this matter was not tape recorded.
>
> 3. Documents that pertain to the discipline imposed were provided to the Association at the disciplinary hearing conducted on April 6, 1995, which resulted in the discipline imposed on Mr. Catterson.
>
> 4. Not applicable. The parties have no agreement to arbitrate. This case is not arbitrable and the School Department does not intend to arbitrate this case.
>
> 5. Not available. The School Department is not required to provide this information; and see #4 above...

On February 16, 1996, the Association requested that the American Arbitration Association (AAA) hold the Catterson arbitration hearing in abeyance pending the conclusion of contract negotiations and to date, this arbitration has not been scheduled.

### Request for Information Concerning the Mullen Grievance

Donald Mullen (Mullen) has been a custodian for the department for twenty-eight (28) years. On April 4, 1995, McNeil notified Mullen that he was to serve a three-day suspension on April 5, 6, and 7, 1995.[10] McNeil conducted the Mullen disciplinary hearing and relied on one witness statement submitted by Al Miller (Miller), and a copy of Miller's statement was given to Mullen. Mullen served that suspension and filed a grievance challenging the discipline. On April 11, 1995, the Association filed a grievance at Step I and the School Committee denied it on April 13, 1995. On April 20, 1995, the Association appealed that grievance to Step II. On May 15, 1995, the School Committee also denied the Step II grievance. McNeil did not record either the suspension hearing or the Step I hearing. On June 12, 1995, the Association filed a demand to arbitrate Mullen's grievance.

On August 3, 1995, the Association sent Morris a request for information related to Mullen's grievance. That request read, in part:

> We would..request...the following information:
>
> 1. A full and complete copy of Mr. Mullen's personnel file.
>
> 2. A full and complete copy of any and all witness statements in connection with the allegations of misconduct forming the basis of discipline imposed on Mr. Mullen.
>
> 3. Copies of any and all transcripts and/or tape recordings of any hearings conducted in connection with this matter.
>
> 4. Copies of ...all other documents that pertain in any way to the discipline imposed on Mr. Mullen.
>
> 5. The names of all witnesses expected to be called at the arbitration of this case...
>
> I request that you provide us with the requested information by the close of business September 15, 1995...

On January 10, 1996, the School Committee sent the following response that read, in part:

> 1. Enclosed please find a copy of Mr. Mullen's personnel file.
>
> 2. Without waiving its position that it does not have an obligation to provide witness statements, copies of written statements were provided to the Association at the disciplinary hearing conducted on April 4, 1995, which resulted in the discipline imposed on Mr. Mullen.
>
> 3. The hearing held in connection with this matter was not tape recorded.
>
> 4. Documents that pertain to the discipline imposed have been provided to the Association (see #2 above) and are contained within Mr. Mullen's personnel file being provided to the Association (see #1 above).
>
> 5. Not applicable. The parties have no agreement to arbitrate. This case is not arbitrable and the School Department does not intend to arbitrate this case.
>
> 6. Not available. the School Department is not required to provide this information; and see #5 above.[11]

## OPINION

A union is entitled to obtain from an employer information that is relevant and necessary to the union's role as exclusive collective bargaining representative. *Commonwealth of Massachusetts*, 11 MLC 1440, 1442 (1985). When a public employer possesses

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9. Although the record reflects that, at the time that the Association filed this charge on December 18, 1995, the School Committee had not formally responded to the Union's request, there is evidence that the School Committee had provided the information regarding Catterson's discipline to the Union on April 6. In its January 11, 1996 letter, the School Committee indicated that it had provided documents pertaining to Catterson's discipline at the April 6, 1995 disciplinary hearing, and the Association has failed to rebut that assertion. Therefore, we modify this finding to reflect that the School Committee failed to respond formally to the Association's August 7, 1995 request, it had provided documents related to Catterson's discipline at the April 6, 1995 disciplinary hearing.

10. That notice read, in part:

> On April 4, 1995 a hearing was held... to discuss your conduct unbecoming a Boston Public School Department employee. Attending the hearing were Mr. Paul E. McNeil and Mr. Charles Cardillo for Facilities, Mr. John Walsh and David Jenkins, Esq. for the Association.
>
> Mr. Mullen, you are hereby issued a three-day suspension without pay. The days of suspension will be April 5, 6, 7, 1995.
>
> *Improvement Plan*
>
> You must follow the direction of the Principal/Headmaster.
>
> You are not to be in a school building other than that to which you are assigned.
>
> You must treat all people with courtesy and respect and cease using profanity and remarks of a racial nature.

11. At the time the Union filed this charge, on December 21, 1995, it had not received a response to its request from the School Committee.

information that is relevant and reasonably necessary to a union in the performance of its duties as the exclusive collective bargaining representative, the employer is generally obligated to provide the information, upon the union's request. *Board of Trustees, University of Massachusetts (Amherst)*, 8 MLC 1148, 1149 (1981). That obligation arises in the context of negotiations and contract administration. *Boston School Committee*, 10 MLC 1501, 1513 (1984). An integral part of the union's role in contract administration is the processing of grievances. Therefore, the union's right to information includes information that assists the union in determining whether a grievance should be filed or pursued. *Commonwealth of Massachusetts*, 21 MLC 1499, 1504 (1994). An employer may justify its refusal to provide information by demonstrating that it has legitimate and substantial concerns about disclosure of the information and that it has made reasonable efforts to provide as much of the information as possible. *Commonwealth of Massachusetts*, 11 MLC at 1443.

### Information Regarding Catterson Grievance

The Employer furnished the Association with the documents related to Catterson's discipline on April 6, 1995. On January 11, 1996, the Employer further indicated that witness statements, tape recordings, the names of arbitration witnesses, and arbitration documents either did not exist or were not available at that time, and the Association points to no evidence to the contrary. Therefore, we conclude that the Employer had either provided the requested information pertaining to the Catterson matter or that information was not available at the time of the Association's request and the School Committee's subsequent response.

### Information Regarding Mullen Grievance

On August 3, 1995, the Association requested information pertaining to Mullen's grievance including Mullen's personnel file and documents related to his discipline. The School Committee failed to respond to this request until after the Association filed a charge at the Commission on December 21, 1995. On January 10, 1996, the School Committee responded by sending Mullen's personnel file and stating that it had previously provided the other information that existed or was available at the time.

The Employer does not dispute that the personnel file and information pertaining to the discipline imposed on Mullen is relevant and reasonably necessary to the Association in the administration of Mullen's grievance, and we conclude that the requested information had a direct bearing on the Association's ability to evaluate the merits of Mullen's grievance. Rather, the Employer asserts that it provided all the requested information that was available.

However, the School Committee responded to the Association's request for that relevant information only after the Association had filed an unfair labor practice charge. Compelling an exclusive bargaining representative to file charges to obtain from the employer that which the Law requires, does not effectuate the purposes of the Law or enhance the spirit of labor relations.

The Commission has consistently held that an employer may not unreasonably delay furnishing requested information that is relevant and reasonably necessary to the Union's function as the exclusive bargaining representative. See *Massachusetts State Lottery Commission*, 22 MLC 1468, 1472 (1996); *City of Boston*, 8 MLC 1419, 1437-38 (1981). A delay is unreasonable when it diminishes the union's ability to fulfill its role as exclusive collective bargaining representative. See *Massachusetts State Lottery Commission*, 22 MLC at 1472-73. Because the School Committee's delay in furnishing the Mullen information hampered the Association's ability to evaluate the merits of the grievance, that delay was unreasonable.

Therefore, we conclude that the Boston School Committee violated Sections 10(a)(5) and (1) of the Law by failing to provide, in a timely manner, information relevant and reasonably necessary to the Association's performance of its duties as the exclusive collective bargaining representative.

## CONCLUSION

We conclude that the evidence is insufficient to show that the Boston School Committee failed to provide the Association with the information requested on August 7, 1997 concerning the Catterson grievance in violation of Sections 10(a)(5) and (1) of the Law. Thus, we dismiss Count I of the Complaint. However, we conclude that the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law as alleged in Count II of the Complaint by refusing to provide, in a timely manner, the information the Association requested in its August 3, 1995 request concerning the Mullen grievance.

## ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED pursuant to Section 11 of Chapter 150E of the General Laws, that the City of Boston shall:

1. Cease from:

   (a) Failing to bargain collectively in good faith with the Association by refusing to provide in a timely manner, information relevant and reasonably necessary to the Association's role as exclusive bargaining representative;

   (b)In any like or similar manner interfering with, restraining or coercing any employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action that will effectuate the policies 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)Post immediately in all conspicuous places where employees represented by the Association usually congregate and where notices are usually posted, and maintain for a period of thirty (30) days, thereafter, signed copies of the Notice to Employees.

   (c)Notify the Commission in writing within ten (10) days of the receipt of this Decision of the steps taken to comply with this Order.

SO ORDERED.

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