In the Matter of CITY OF WORCESTER

and

WORCESTER VOCATIONAL TEACHERS ASSOCIATION/MTA/NEA

Case No. MUP-1889

67.3 furnishing information
82.12 other affirmative action

May 20, 1999
Diane M. Drapeau, Hearing Officer

Anthony T. Rice, Esq.	*Representing the City of Worcester*
Ira Fader, Esq.	*Representing the Worcester Vocational Teachers Association/MTA/NEA*

HEARING OFFICER'S DECISION

STATEMENT OF THE CASE

This case involves an allegation by the Worcester Vocational Teachers Association/MTA/NEA (Association) that the City of Worcester (City) has violated Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E (the Law) by failing and refusing to provide the Association with relevant and reasonably necessary information.

The Association filed its charge with the Labor Relations Commission (Commission) on June 20, 1997. The Commission issued its Complaint of Prohibited Practice on February 10, 1998. In lieu of a hearing, the parties filed a stipulation of facts, joint exhibits, and briefs on August 5, 1998.

FINDINGS OF FACT

The City is the public employer of the employees at Worcester Vocational High School acting, since July 1, 1998, through its School Committee. Prior to July 1, 1998, the Worcester Vocational High School operated as a separate school system under the direct jurisdiction of the City. On July 1, 1998, the Worcester Vocational School System ceased to exist as an independent vocational school system within the City and merged with the Worcester School District under the jurisdiction of the Worcester School Committee. The City has recognized the Education Association of Worcester/MTA/NEA as the exclusive bargaining representative of employees in the bargaining unit formerly represented by the Worcester Vocational Teachers Association/MTA/NEA.

During the 1994-1995 school year, the City and the Association agreed to the creation of new department head positions in academic areas in place of "instructor in charge" positions in those areas. The department head position carried a negotiated stipend in the range of $2500 to $2800 annually.

In or about July 1995, the City both posted and advertised the department head positions and notified bargaining unit members of the openings. Several bargaining unit members applied for the positions, including Eileen Jundzil (Jundzil). The City did not appoint Jundzil to a department head position.

In September and October, 1995, the Association initiated two grievances, one on behalf of Jundzil and another on behalf of a class of bargaining unit members, challenging the procedures the City followed in appointing department heads.

The City and the Association were parties to a collective bargaining agreement covering the period from January 1, 1995 through December 31, 1997. Article 10 of the agreement provided, in relevant part, that:

> 3. All qualified teachers will be given adequate opportunity to make application for such [new professional] positions, and after a rating examination prescribed by the Division of Occupational Education, the City agrees to give consideration to the professional background and attainments of all applicants, the length of time each has been in the Worcester Vocational School System, and other relevant factors.
>
> 4. For promotional positions, examinations, experience and other relevant factors are all necessary for a teacher to qualify for the positions.

The City filed a complaint with the Massachusetts Superior Court pursuant to M.G.L. c. 150C seeking a stay of arbitration. On cross-motions for summary judgment, the Court denied the City's request for a stay.

The grievances accordingly were advanced to arbitration and scheduled for hearing. On February 12, 1997, Gerald Coleman (Coleman), a field consultant with the Massachusetts Teachers Association (MTA), filed, on behalf of the Association, a request for information with the City in connection with the two grievances. Specifically, he sought information concerning the professional background and attainments of the candidates who were selected for promotional vacancies.

Coleman sent a second request on March 20,1997, seeking: 1) the professional background and educational attainments of those selected, namely Richard Burgoyne (Burgoyne), Michele Marin (Marin), and Nicholas Moran (Moran); 2) length of time each served in the Worcester Vocational School System; and 3) other relevant factors considered in the Director's recommendation to promote these individuals to the department head positions.

By letter dated March 25, 1997, the City's attorney notified Coleman that the City denied his request, citing the Fair Information Practices Act (FIPA). The City indicated that it would not release the requested information without signed releases from the bargaining unit members whose personnel records were at issue or without a confidentiality agreement. The City offered the Association an opportunity to secure the releases directly from the affected employees. In the letter, the City also offered to provide certain of the information sought by the Association and further offered to reach an accommodation to resolve the dispute concerning the information at issue.

On or about April 10, 1997, Coleman faxed a sample confidentiality agreement to the City's attorney and indicated that the Association

would be willing to enter into a similar agreement. The Association also indicated that it would not enter into an indemnity agreement with the City concerning the requested information. Regarding the releases, the Association had reason to believe that the employees would not consent to the release of their personnel information. Coleman informed the City's attorney that the Association was not comfortable or willing to formally contact the employees whose personnel records were at issue and that the responsibility for seeking a release was the City's. The City also learned, contemporaneously with the above events, that the employees whose personnel records were at issue adamantly opposed any release of said records.

On April 16,1997, the City through counsel informed Coleman that, in view of the opposition to disclosure expressed by the individual employees whose personnel records were at issue, the City would not disclose the information sought by the union without an appropriate court order or other similar device.

The parties proceeded to arbitration of both grievances on May 5, 1997. Without the requested information, the Association asserted that it was unable and unwilling to proceed on the merits of the claims, but both parties agreed to allow the arbitrator to determine the arbitrability claims raised by the City.

By decision dated June 12, 1997, the arbitrator concluded that Jundzil's grievance was arbitrable, but the second grievance was not.

OPINION

A public employer is obligated to furnish a union with information that is relevant and reasonably necessary for the union to process grievances and administer collective bargaining agreements. *City of Boston*, 25 MLC 55, 57 (1998); *Higher Education Coordinating Council*, 23 MLC 266, 268 (1997). The standard for determining whether the information requested by a union is relevant is a liberal one, similar to the standard for determining relevancy in a civil litigation discovery proceeding. *City of Boston* at 57, citing *Board of Trustees, University of Massachusetts*, 8 MLC 1139, 1141 (1981).

In the instant case, it is undisputed that the Association filed two grievances challenging the City's decision for the department head positions. It is also undisputed that the Association requested certain information from the City in order to process the grievances of its bargaining unit members to arbitration. The City argues that it is not necessary to provide this information to the Association because the Association will be able to have access to the information during the course of the pending arbitration when the Director testifies about his promotional decision. I disagree with the City. In order to properly represent its bargaining unit members, the Association needs to review the information the Director relied upon for his decision prior to the commencement of the arbitration in order to adequately prepare for litigation, including preparing for the cross-examination of the Director. See, *Board of Trustees* at 1143; *City of Boston*, 22 MLC 1698, 1707 (1996). The information requested by the Association relates directly to those factors that the City was contractually required to rely upon in the selection process. Therefore, I find that the information sought by the Association is relevant and reasonably necessary to its role as exclusive bargaining representative.

Once a union has shown that requested information is relevant and reasonably necessary to its duties as bargaining agent, the employer has the burden of demonstrating that its concerns about disclosure of the information are legitimate and substantial. *Board of Trustees* at 1144. In order to determine whether the information should be disclosed, the Commission applies a balancing test. The Commission weighs the union's need for the information against the employer's legitimate and substantial interests in non-disclosure. *City of Boston*, 25 MLC 55, 57 (1998); *City of Boston*, 22 MLC 1698, 1706 (1996). A refusal to provide information will be excused where the employer's concerns are found to outweigh the needs of the union. *Commonwealth of Massachusetts*, 21 MLC 1499, 1503 (1994), citing *Boston School Committee*, 13 MLC 1290, 1298 (1986).

Here, the City does not claim that the identity of the employees or their length of service in the school system are confidential matters. However, the City contends that the Association's request necessarily includes information that is evaluative in nature and therefore confidential. However, in cases where a union has sought information regarding promotional decisions, either through an information request or a subpoena, the Commission has held that even a claim of confidentiality does not permit the employer to withhold all of the information sought. *Board of Trustees, University of Massachusetts*, 8 MLC 1139, 1145 (1981) (information regarding the successful candidate's test scores and the Search Committee's report); *Board of Trustees, University of Massachusetts*, 8 MLC 1148, 1152 (1981) (information regarding the successful candidate's job application)[1]; *Town of Weymouth*, 16 MLC 1031, 1035 (H.O. 1989); aff'd 16 MLC 1168 (1989) (evaluations of all the candidates for promotion with names, addresses, phone numbers and dates of birth redacted). In *Boston Police Superior Officers Federated Union*, 414 Mass. 458 (1993), the Court ordered the employer to provide the union with the Boston police department's internal affairs logs, cards and files so that the union would have an opportunity to review information related to the successful promotional candidates in order for the union to prove a claim of retaliation of a rejected candidate in a prohibited practice case before the Commission. However, because of confidentiality concerns, the Court ordered certain safeguards as to the identity of the persons referenced and the information contained in the logs, cards, and files.

The instant case presents no facts or arguments that would lead me to conclude that the City should be excused from producing

1. However, the Commission noted that any information that was not directly related to the job application and was of a highly personal nature need not be provided. *Board of Trustees* at 1152.

information that the Commission and the Court have previously determined is the kind of information that warrants production.

Where an employer has a good faith concern involving confidentiality, the employer has an obligation to initiate a discussion to explore acceptable alternative ways to permit the union access to the necessary information. *City of Boston*, 22 MLC 1698, 1709 (1996), citing *Worcester School Committee*, 14 MLC 1682, 1684 (1988). Here, the Association offered to enter into a confidentiality agreement, but the City refused the offer. Furthermore, the City refused to provide information that it believed to be a matter of public record, such as, the names of the successful candidates and their length of service in the school system.

For all of the above reasons, I find that the City has violated Sections 10(a)(5) and (1) of the Law by failing and refusing to provide the Association with the requested information.

ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the City of Worcester shall:

1. Cease and desist from:

a. Failing and refusing to bargain in good faith with the Association by failing and refusing to provide information relevant and reasonably necessary to the Association, specifically the professional background and educational attainments of Richard Burgoyne, Michele Marin, and Nicholas Moran; the length of time each served in the Worcester Vocational School system; and other relevant factors, including evaluations, considered in the Director's recommendation to promote these individuals to the department head positions. However, the City should redact any data that contains highly personal or intimate details about the employees.[2]

b. Interfering with, restraining and coercing its employees in any right guaranteed by Law.

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

a. Upon the request of the Association, provide it with information regarding the professional background and educational attainments of Richard Burgoyne, Michele Marin, and Nicholas Moran; the length of time each served in the Worcester Vocational School system; and other relevant factors, including evaluations, considered in the Director's recommendation to promote these individuals to the department head positions. However, the City should redact any data that contains highly personal or intimate details about the employees.

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.

NOTICE TO EMPOLYEES

A hearing officer of the Labor Relations Commission has determined that the City of Worcester has violated Sections 10(a)(5) and (1) by failing to provide the Worcester Vocational Teachers Association/MTA/NEA with certain information which is necessary and relevant to Association's defending its bargaining unit members in arbitration.

WE WILL NOT fail and refuse to bargain in good faith with the Association by failing and refusing to provide information relevant and reasonably necessary to the Association in the defense of its bargaining unit members in arbitration.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of their rights under M.G.L.c.150E.

WE WILL, upon request by the Association, provide it with all of the requested redacted information.

[signed]
Mayor, City of Worcester

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In the Matter of CITY OF PEABODY

and

PEABODY POLICE BENEVOLENT SOCIETY

Case No. MUP-9861

65.22	***filing a grievance***
65.62	***threat of reprisal***
65.91	***request for representation at disciplinary interview***
82.2	***cease and desist orders***

May 21, 1999
Robert C. Dumont, Chairman
Helen A. Moreschi, Commissioner

Daniel Kulak, Esq.	*Representing the City of Peabody*
Robert Wise , Esq.	*Representing the Peabody Police Benevolent Society*

DECISION

On May 31, 1994, the Peabody Police Benevolent Society (the Union) filed a charge of prohibited practice with the Labor Relations Commission (the Commission) alleging that the City of Peabody (the City), through its agent, Administrative Assistant to the Chief of Police John Begley (Begley) had violated Sections 10(a)(1), (2), (3), (4) and (5) of M.G.L. c. 150E (the Law). On November 4, 1994, the Commission issued a Complaint of Prohibited Practice, alleging that the City, through Begley, had violated Section 10(a)(1) of the Law by: 1) ordering Patrol Officer

2. See, *Commonwealth of Massachusetts*, 21 MLC 1499, 1506 (1994).