In the Matter of TRUSTEES OF THE UNIVERSITY OF MASSACHUSETTS MEDICAL CENTER

and

MASSACHUSETTS NURSES ASSOCIATION

Case Nos. SUP-4392, SUP-4400

51.11	*authority of employer representative*
52.1	*breach*
54.31	*impact of management rights decision*
54.515	*reorganization*
54.8	*mandatory subjects*
65.9	*other interference with union*
67.16	*other defenses*
67.3	*furnishing information*
67.42	*reneging on prior agreements*
67.71	*withdrawal from negotiations*
67.8	*unilateral change by employer*
82.4	*bargaining orders*
91.1	*dismissal*

March 10, 2000
Robert C. Dumont, Chairman
Helen A. Moreschi, Commissioner
Mark A. Preble, Commissioner

Paul V. Lyons, Esq. *Pamela B. Blatte, Esq.*	*Representing the Trustees of the University of Massachusetts, Medical Center*
Jack J. Canzoneri, Esq. *Mark A. Hickernell, Esq.*	*Representing the Massachusetts Nurses Association*

DECISION[1]

Statement of the Case

This case involves allegations by the Massachusetts Nurses Association (Association) that the Trustees of the University of Massachusetts Medical Center (Employer) has violated Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E (the Law) by: 1) refusing to provide necessary and relevant information to the Association; 2) filing merger legislation with the Massachusetts Legislature prior to reaching resolution or impasse with the Association about the impact of that legislation on the bargaining unit members' terms and conditions of employment; 3) repudiating a contractual provision regarding seniority accrual; 4) changing its spokespersons during negotiations without notice to the Association; and 5) bypassing the Association and dealing directly with bargaining unit members.

The Association filed its charges with the Labor Relations Commission (Commission) on July 7, 1997 (Case No. SUP-4392) and August 8, 1997 (Case No. SUP-4400). The Commission issued its Complaints of Prohibited Practice on June 3, 1998 (SUP-4392)

1. Pursuant to 456 CMR 13.02(2), this hearing has been designated for a Commission decision in the first instance.

and June 25, 1998 (SUP-4400). The cases were consolidated for hearing and heard before Diane M. Drapeau, a duly designated hearing officer of the Commission, on December 7, 8, 10, and 11, 1998. Both parties had a full and fair opportunity to present testimonial and documentary evidence. Both parties filed post-hearing briefs on February 18, 1999. In addition, the Association filed a reply brief on March 8, 1999 and the Employer filed its reply brief on May 7, 1999.[2] The hearing officer issued her Recommended Findings of Fact on July 16, 1999 and the parties filed challenges to those facts on July 29, 1999. We have reviewed the record in light of these challenges, and adopt the hearing officer's findings of fact, except where noted.

FINDINGS OF FACT[3]

The Association's Requests for Information

Andrea Fox (Fox) is the Association's associate director for labor relations. She is responsible for negotiating contracts, processing grievances, testifying before the Legislature, and making information requests. From May 1995 through February 1998, she was assigned to the Association's bargaining unit at the Medical Center. She was the Association's chief spokesperson in negotiations for a successor agreement to the parties' 1993-1996 collective bargaining agreement. The parties tentatively agreed on the terms of a successor collective bargaining agreement on February 14, 1997, ratified the contract on February 24, 1997, and executed it in April 1997.

Sometime prior to December 6, 1996, Fox heard from a bargaining unit member about a possible merger between the Employer and Memorial Hospital in Worcester (Memorial Hospital). On December 6, at a successor contract negotiations session, Michael Greene (Greene), the Employer's spokesperson, spoke about the financial health of the Employer. Fox asked Greene if the Employer was going to merge with Memorial Hospital, and Greene responded that there had been approximately ten conversations between the Employer and Memorial Hospital regarding this issue.

On December 17, 1996, Fox sent a written request to Lin Weeks (Weeks), the Employer's hospital administrator, seeking the following information:

> (a) Any documents regarding a corporate merger, consolidation, affiliation and/or a joint venture between University of Massachusetts Medical Center and Memorial Hospital.
>
> If you contend that no such documents exist, please provide a detailed explanation of the relationship between the hospitals, including but not limited to any current or planned cooperative undertakings by and between those organizations.
>
> (b) Any documents relating to plans for altering the operations of University of Massachusetts Medical Center arising from any possible changes in University of Massachusetts Medical Center's status described above, including but not limited to documents regarding any plans, if any, to eliminate any nursing units, layoff members of the bargaining unit, interchange personnel with the other hospitals, change the budgeting and funding sources for, operationally integrate the hospitals, integrate the management of the hospitals. If you contend that no such documents exist, please provide a detailed description and detailed explanation of University of Massachusetts Medical Center and/or its parent corporation's (if any) and/or its related organization's (if any) intentions or plans in any of the areas listed in the preceding sentence.[4]
>
> (c) Any documents relating to current or planned future status of University of Massachusetts Medical Center and Memorial Hospital as sub-corporations of a parent corporation; if you claim that no such documents exist, please provide information in that regard.

Weeks responded on December 20, 1996, requesting the Association to explain why it needed the information.

On December 27, 1996, Fox made an additional request for information concerning the possible sale, merger, consolidation, affiliation, and/or joint venture between the Employer and Athol Memorial Hospital, Berkshire Medical Center, Health Alliance, and/or Memorial Hospital in Worcester. The documents requested were the same as in Fox's December 17 letter to Weeks.

In January 1997, Fox made a verbal request for information regarding age and accrued creditable service of bargaining unit members to Employer representatives Teri McNamara, Rick Stanton, and Michael Green.[5] Fox needed this information because retirement and pension issues were pertinent to the negotiations.

In response to the Employer's December 20 letter, on January 23, 1997, the Association's attorney sent a letter to the Employer explaining the basis for the Association's request for information and reiterating the request as follows:

> (1) All documents relating to a merger by and between the Employer (and/or its Medical Center) and another Entity that affects the Medical Center, including but not limited to any merger agreements. If you contend that no such documents exist, please provide a detailed description of the relationship, if any, between the Employer (and/or its Medical Center) and another Entity, whether such relationship already exists or has not yet been established.[6]

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2. On March 22, 1999, the Employer filed "Respondent's Motion for Order Compelling Charging Party to Provide Audiocassette Citations to 'Facts' Referenced in Post-Hearing and Reply Briefs". The Employer explained that it needed the citations to review the facts cited in the Association's brief in order to decide whether or not to file a reply brief. On March 23, 1999, the hearing officer denied the Employer's motion. Because she had not authorized the Association to file a reply brief, the hearing officer offered the Employer the choice of 1) requesting that the Association's reply brief not be considered or 2) requesting time to file a reply brief. On April 7, 1999, the hearing officer granted the Employer's request to file a reply brief.

3. Neither party contests the Commission's jurisdiction in this matter.

4. The Association challenged the accuracy of the quoted passages from Fox's letter. After reviewing the evidence, we have modified the quotation to accurately reflect Fox's letter.

5. The Employer challenged the hearing officer's findings of fact noting that there was no evidence that Fox's request was made at a negotiations session. We have reviewed the record and modified this fact accordingly.

6. The Association challenged the accuracy of the quoted passage from Canzoneri's letter of January 23, 1997. We have reviewed the evidence and have modified the quotation to accurately reflect the January 23 letter.

(2) All documents relating to plans for altering the operation of the Medical Center arising from Mergers and/or relationships identified in paragraph one above, including all plans that have been consummated and plans that have not yet been consummated. This includes but is not limited to plans, if any, to eliminate nursing units, layoff members of the bargaining unit within the Medical Center, interchange personnel between the Medical Center and another Entity, change the budgeting or funding sources for the Medical Center, operationally integrate the Medical Center with another Entity, and integrate management of the Medical Center and another Entity. If you contend that no such documents exist, please provide a detailed description of the Employer and/or Medical Center's plans in the areas identified in the preceding sentence.

(3) All documents relating to current or planned future status of the Employer and/or its Medical Center as sub-corporations of a parent corporation. If you claim that no such documents exist, please provide information in that regard.

In addition, the Association requested that the Employer respond as soon as possible.

On January 29, 1997, the Employer wrote to the Association's attorney seeking to ascertain whether the Association continued to be interested in obtaining the requested information because the Employer believed that the parties had reached a tentative agreement on January 23, 1997 that included a clause dealing with the issue of successorship and the relocation of nurses into and out of the bargaining unit.

On February 12, 1997, the Association's attorney wrote to the Employer indicating that it was still interested in obtaining the requested information because the information would be necessary for the Association to administer the successorship and relocation clauses of the parties' successor collective bargaining agreement. However, the Association noted that there was, as yet, no completed successor agreement. Although certain individual items had been signed-off, there were still issues left on the bargaining table. In addition, the Association clarified its information request by stating that it was seeking all proposed legislation regarding a merger and also added Hubbard Regional Hospital to its request.

On February 27, 1997, the Employer responded to the Association's numerous requests for information as follows:

> With regard to your general request for documents pertaining to University "plans", the University does not believe it has any obligation pursuant to the terms of MGL c. 150E to provide information about matters being developed and/or not yet finalized. Such information, if it existed, might also involve attorney-client communications and confidential information involving core managerial discretion and decision-making, and again the University believes such information to be excluded from the terms of MGL c. 150E. Accordingly, the University does not believe it appropriate or necessary to provide documents in a developmental status concerning evolving matters. However, be assured that if and when a decision is made that impacts the MNA unit, the University would provide the MNA with the documents required by MGL c. 150E.
>
> Further responding to your request, enclosed please find the only affiliation agreements the Medical Center has, they include the following: Athol Memorial Hospital, Central New England Health Systems, Inc. (what you refer to as Health Alliance Inc.), Hubbord Hospital, Holyoke Hospital, Noble Hospital and Wing Memorial Hospital. As for Harrington Hospital, Heywood Hospital, Day Kimbal Hospital and Milford-Whitinsville Hospital, the University has already provided the MNA with copies of these agreements on or about May 23, 1996. Tri-River is a Medical Center operation. And finally, with regard to Berkshire Medical Center, Clinton Hospital, Marlboro Hospital and Shrewsbury Community Clinic, the Medical Center does provide certain physician services at these facilities.
>
> Regarding your request for merger documents, enclosed please find the following documents: the Definitive Agreement and relevant votes of the University's Board of Trustees. Minutes of the Board of Trustee votes will be made available to you once they have been officially approved and adopted by the Board.

On March 17, 1997, Fox received a communication from Kathryn Fisk (Fisk), the Employer's associate vice chancellor for human resources, that included a graph and the following notation: "As requested, attached is a very rough analysis of the MNA population based on age and service. As you know, we are working to verify this information for all MNA members in the next several weeks."

Impact negotiations regarding the proposed merger of the Employer with Memorial Hospital began on March 18, 1997. During the course of that impact negotiations session, Julie Pinkham (Pinkham), the Association's director of labor relations, orally requested information regarding creditable service from Greene, one of the Employer's representatives. Greene gave her some documentation regarding creditable service and Pinkham later advised him that some of the information was not accurate. He agreed and said that the Employer was unable to get accurate creditable service information and he suggested that the Association survey its bargaining unit members to obtain more accurate numbers.

The Association subsequently conducted a survey of its membership to ascertain whether their members had any additional creditable service due to their employment with other public employers. The survey also sought to determine whether members had worked part-time or full-time.

On March 24, 1997, the Association's attorney responded as follows to the Employer's February 27 letter:

> First, ...the University represents that it has supplied all documents responsive to the MNA's request for documents "relating to a merger" as specified in the first paragraph of the information request. Therefore, I am assuming that there are no other documents containing, showing, relating to, or referring in any/or all ways directly or indirectly to the subject of a merger. Please confirm whether this is correct. If there is further responsive documents and information, please provide same to me as soon as possible.
>
> Second, I also understand from your letter that the University is refusing to provide information about "plans for altering the operation of the Medical Center" to the extent that such information is either (a) "being developed and/or not yet finalized," or (b) "involves attorney-client communications and confidential information involving core managerial discretion and decision-making". I am unclear as to what you mean by this.
>
> As to the issue of "plans" "being developed" or "not yet finalized," do you mean that MNA is not entitled to information about "plans" to the extent that there have been discussions only as to possibilities, without any decision having been made as to whether actually to

> pursue a course of action? Do you contend that MNA is not entitled to information about "plans" to the extent that they have not yet been implemented, even though the University has decided to take a particular course of action? Does the University represent that it has made no decisions regarding any "plans" for operational changes from a merger as of this date?[7]
>
> ...Finally, I am also requesting that you clarify your letter by responding to the following question: Assuming that the University has made "plans" for operational changes arising from a merger, for each such plan, please identify the general subject matter of the plan (e.g. layoffs, management reassignment, closure of nursing units), and provide a detailed explanation of the reasons why the University is failing to provide MNA with information about each such plan?

In addition, the Association requested that the Employer respond within seven days.

On March 31, 1997, the Employer reiterated its position reflected in its February 27 letter to the Association. Further, the Employer stated that it anticipated that the on-going impact negotiations would adequately address issues raised by the possible merger with Memorial Hospital.

On June 6, 1997, Pinkham wrote a note to Greene requesting a list of all bargaining unit members, their names, dates of hire, and the Employer's best estimate to date of their creditable service. On the same date, Deputy Chancellor Richard Stanton (Stanton) wrote Pinkham and Linda Johnson (Johnson), the chair of the Medical Center's bargaining unit, as follows:

> ...Having now made two distributions of data, as best we have been able to compile it, a number of individuals have identified potential areas of concern and/or errors in the historical data.
>
> It has been suggested that you might identify two or three individuals through whom members of the bargaining unit could funnel requests for clarification and/or correction of this information.
>
> ...If you would be willing to identify points of contact, we will ensure that Kathy Fisk, the Human Resources staff and Tom Bergan coordinate our responses to concerned nurses through these contact.

According to Fisk the difficulty in obtaining information about creditable service was that the Employer's payroll system did not provide the employment history of the Medical Center's employees. To obtain this information, someone has to pull out each employee's file and check through each personnel action form to find out if that employee worked part-time, full-time, or had leaves of absence. All the research must be done manually. The information then needs to be compiled and sent to the State Board of Retirement (Retirement Board), which is the only entity that validates an employee's creditable service.[8]

On April 17, April 23, and May 1, 1997, the Employer sent information to bargaining unit members attempting to accurately determine their years of creditable service. On June 6, 1997, Stanton sent Association representatives Johnson and Pinkham a memorandum requesting that the Association, "...identify two or three individuals through whom members of the bargaining unit could funnel requests for clarification and/or correction of [the creditable service] information" previously provided to the bargaining unit members.[9]

From November 1997 through April 1998[10], Fisk had four of her permanent staff and four temporary employees, specifically hired for this task, working weekdays, weekends, nights, and holidays, reviewing four thousand personnel files to ascertain the creditable service of Medical Center employees, including members of the Association's bargaining unit.

Fisk explained that it is even more difficult to obtain information regarding creditable service earned by employees if they were previously employed by other public employers. The Employer does not normally ask employees if they worked for another public employer to ascertain creditable service. This is usually the responsibility of the Retirement Board. However, in an attempt to obtain this information, in December 1997, the Employer sent a questionnaire to all employees soliciting information regarding creditable service accrued when employed by other public employers and requesting that the employees specify details of their employment history.

Since March 1997, Fisk has been in constant communication with the Retirement Board. Several times, on behalf of the Employer, she has offered to provide the Retirement Board with staff and office space to assist the Retirement Board to gather the information regarding bargaining unit members' creditable service. The Retirement Board rejected these offers. The Employer continues to gather this creditable service information and has hired two temporary employees and plans to hire two more to accomplish this task. As of December 10, 1998, the Employer had provided the Association with all of the creditable service data in its possession for bargaining unit members.[11] The Retirement Board also continues to compile and validate bargaining unit members' creditable service.

The Impact Bargaining Sessions

On February 24, 1997, Fox, on behalf of the Association, sent a letter to Chancellor Aaron Lazare (Lazare) demanding to bargain

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7. The Association challenged the accuracy of the quoted passage. We have reviewed the evidence and have corrected the quote.

8. The Employer challenged this finding of fact claiming that only the Retirement Board calculates and validates creditable service. However, the record supports the finding that the Employer may also calculate creditable service, but that only the Retirement Board validates the calculations of creditable service.

9. The Employer challenged the findings of fact because of the omission of the April 17, April 23, May 1, and June 6 letters from the facts. Upon review of the record, we modify the facts to include a reference to these letters.

10. The Association's challenged the hearing officer's finding that Fisk had for "several months" engaged four of her permanent staff and four temporary employees ascertaining the creditable service of bargaining unit members. We have reviewed the record and modify this finding to include the fact that the months were from November 1997 through April 1998.

11. The Association challenged the hearing officer's finding that "all the current information had been provided to the Association". Upon review of the record, we have modified the finding in accordance with the Association's challenge.

over the impact of proposed legislation to merge the Medical Center with Memorial Hospital.[12] Impact negotiations commenced on March 18, 1997 and extended through October 1997. Although Fox was not the chief spokesperson for the impact negotiations, she attended almost all of the bargaining sessions. Pinkham was the chief spokesperson for the impact negotiations[13] and she attended all of the bargaining sessions. Bargaining sessions were held on March 18, March 19, March 24, March 26, March 31, April 3, April 7, April 8, April 16, and July 2, 1997.[14]

The Employer's chief spokesperson, Teri McNamara (McNamara), the director of employee and labor relations and workers compensation, discussed the first draft of the Employer's proposed legislation at the March 18 bargaining session. Anne Bourgeois (Bourgeois) was also present on behalf of the Employer.[15] Pinkham asked questions about the legislation. McNamara said she was not involved in creating the legislation so was not prepared to answer any specific questions about it. Pinkham suggested that the parties set a date to meet with persons who could answer specific questions about the legislation.

On March 19, 1997, the parties held their second bargaining session. Present at the meeting for the Association were Pinkham, Roslyn Feldberg (Feldberg), and the Association's bargaining team. Present for the Employer were McNamara, Greene, and Stanton, who had drafted the legislation. Stanton went through a line-by-line explanation of the legislation for the Association. Pinkham told the Employer's representatives that she did not want the legislation being submitted to the Legislature without the parties' reaching agreement. Stanton replied that for a variety of reasons the Employer needed to move the legislation. He offered to give the Association a period of two weeks to negotiate and then the legislation would be filed. Pinkham refused to agree to be limited to a period of two weeks for negotiations. The Association raised the issue of the seniority provision of the recently-negotiated successor collective bargaining agreement at this meeting.[16]

Article XV of the parties' successor agreement provided, in relevant part:

> **Section 15.01 - Definition**
>
> Seniority is defined as years in a bargaining unit position while continuously employed by the University of Massachusetts Medical Center. This section shall not affect the seniority of any bargaining unit RN who has received seniority credit for non-unit services at the Medical Center prior to execution of this Agreement.
>
> This will affect and be applied to all bargaining unit registered nurses as of December 18, 1990.
>
> **Section 15.02 - Termination of Seniority**
>
> A bargaining unit of RN's seniority shall be terminated and his/her rights under this Agreement forfeited for the following reasons:
>
> (a) Discharge for cause, resignation, or retirement.
>
> (b) Exceeding an authorized leave of absence unless excused by Management.
>
> (c) Failure to return to work within five (5) consecutive days after notification of recall from layoff by the University of Massachusetts Medical Center....
>
> (d) If a bargaining unit RN is laid off, for a continuous period of two (2) years, or his/her length of service, whichever is less.
>
> (e) If a bargaining unit RN gives a false reason for a leave of absence.
>
> (f) Acceptance of a settlement for total and permanent disability.
>
> (g) Absence from work for five (5) days without valid reasons and proper and timely notification to the University of Massachusetts Medical Center except when excused by the University of Massachusetts Medical Center.
>
> **Section 15.03 - Possibility of Recalculation**
>
> If, during the life of this Agreement, the present payroll/computer systems are modified to allow for the calculation of seniority on an hours-worked basis the parties agree to negotiate its applicability to the bargaining unit.
>
> **Section 15.04**
>
> Seniority will be frozen with appointment to an RN, non-bargaining unit position. It will be reinstated and accumulate upon re-appointment to a bargaining unit position. Individuals appointed to an acting position shall continue to accumulate seniority for up to six (6) months after said appointment. The bargaining unit master seniority list will be adjusted to reflect this.
>
> **Section 15.05**
>
> Bargaining unit RNs who have been continuously employed as LPNs at the University of Massachusetts Medical Center immediately prior to their appointment into a bargaining unit position will be granted one year union seniority for each two years employment as an LPN. For purposes of placement on the salary schedule, if a new bargaining unit member who has four years of continuous LPN experience for the Employer is hired into the bargaining unit, that new bargaining unit member shall be hired at Step 2 and go up one step on the pay scale for every four years employed by UMMC as an LPN. This is applicable to all current bargaining unit RNs. The bargaining unit master seniority list will be adjusted as necessary.[17]

The Employer's first draft of the proposed merger legislation included the following seniority provision:

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12. The Association does not represent the nurses at Memorial Hospital.

13. Pinkham was not involved in the negotiations for the successor agreement.

14. The bargaining sessions were very lengthy, some lasting 24 hours.

15. In addition, representatives of Memorial Hospital attended the negotiations sessions.

16. The Association challenged the inclusion in the findings of McNamara's statement that it was not the Employer's intent to "trump" the contractual seniority provision. We agree with the Association that this statement should not be included in the facts because McNamara did not draft the proposed legislation and did not have first-hand knowledge of the "intent" of the legislation.

17. The seniority provision, noted above, impacts other contractual provisions including, Article IX (Vacations), Section 9.20; Article XVI (Promotions and Filling of Vacancies), Section 16.04; Article XVIII (Reduction in Force); and Article XX (Rotations), fourth paragraph.

> When an individual employed by a medical service entity relocates from one campus of a medical service entity to another campus of a medical service entity or from one medical service entity to another medical service entity due to the relocation of a program or service, or when an individual employed by the university and contracted to a medical service entity becomes employed by a medical service entity and relocates as described above, in either case the seniority and length of service of that employee shall be determined (for any purpose other than post-employment benefits, and, except when required by federal law, retirement plans) as if all service rendered at the campus or medical service entity from which the employee relocates had been rendered at the campus of medical service entity to which the employee is relocated. If the application of this section must be delayed for any reason with respect to employees in any class or category of employees, then this section shall not apply with respect to any other employees within the same class or category, wherever or however employed, during the period of such delay.

In addition, the Employer's first draft of the proposed legislation included retention-of-collective-bargaining-agreement-rights language:[18]

> Employees of the university within the clinical division who are represented by an employee organization recognized in accordance with [M.G.L.c.150E, s.4) as of the effective date of this act shall retain all the rights and obligations of collective bargaining agreements in effect as of the effective date of this act, during the term of said agreements and for so long as the said employees remain so employed and so represented.

On March 24, 1997, the Association submitted its proposals to the Employer on the following issues: effect of merger, moratorium on RN layoffs, consolidation or elimination of services, subcontracting, accretion, neutrality agreement, non-profit commitment, and public mission commitment.

On March 26, March 31, April 3, and April 7, 1997, the Association and the Employer exchanged proposals regarding amendments to the proposed legislation.[19] During the course of negotiations, the parties agreed to several changes in the language of the proposed legislation.

On April 8, 1997, the parties held a bargaining session. Present for the Employer were Greene and Stanton. Also present were Thomas O'Donnell (O'Donnell) and Peter Ebb (Ebb), attorneys for the future new entity, called "newco".[20] Present for the Association were Pinkham, Feldberg, and the Association's bargaining team. O'Donnell told the Association that the Employer would be filing the merger legislation. Pinkham objected to filing the legislation prior to an agreement with the Association on the impact issues. Stanton said that they would incorporate all of the issues raised in bargaining into the proposed legislation. Pinkham again stated her objection to submitting legislation that included only part of the negotiations. Stanton said that the Employer would determine which parts of the negotiations to include in the legislation. Pinkham again protested saying that the parties did not have an agreement. She noted that the parties had had a good dialogue and had reached a conceptual agreement over a couple of issues, but had not reached agreement over a number of major issues. She did not think it was appropriate for the Employer to pick and choose which parts of the negotiations to include in the legislation and to submit it without a complete agreement.

On April 14, 1997, the Employer filed the legislation entitled: "An Act Authorizing the Establishment in Central Massachusetts of a Health Care System Affiliated with the University of Massachusetts Medical School" (House Bill 4397). Section 4 (d) of House Bill 4397 dealt with seniority as follows:

> When an individual employed by a medical service entity relocates from one campus of a medical service entity to another campus of a medical service entity or from one medical service entity to another medical service entity, or when an individual employed by the university and contracted to a medical service entity becomes employed by a medical service entity and relocates as described above, in any such case the seniority and length of service of that employee shall be determined (for any purpose other than post-employment benefits and, except when required by federal law, retirement plans) as if all service rendered at the campus of medical service entity from which the employee relocates had been rendered at the campus or medical service entity to which the employee is relocated. If the application of this section must be delayed for any reason with respect to employees in any class or category of employees, then this section shall not apply with respect to any other employees within the same class or category, wherever or however employed, during the period of such delay.

In addition, the proposed legislation contained the identical retention-of-collective-bargaining-agreement-rights language, as noted above, in the Employer's first draft of the proposed legislation.

On May 6 and 15, 1997, the Legislature held a hearing on the merits of the bill. Employer and Association representatives testified at the hearing.

From July 1997 through October 1997 the parties participated in approximately eight mediation sessions. After the termination of mediation in October 1997, Pinkham and McNamara met and reached a tentative agreement about outstanding impact issues. However, the agreement was contingent upon the approval of their principals. The Employer did not ratify the tentative agreement.

On November 4, 1997, Johnson, the chair of the Medical Center's bargaining unit, wrote a letter to the members of the House of Representatives requesting them to support the passage of the legislation (now known as Senate Bill 1875). Johnson stated, in relevant part:

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18. The Employer challenged the hearing officer's findings of facts for omitting this provision of its draft language in the facts. Upon review of the record, we have decided to add this provision to the facts.

19. In the middle of negotiations on March 31, McNamara left the bargaining session and was unable to return because of car trouble. She spoke to Association representative Fox and Employer representative Stanton and requested that, in her absence, Stanton take over the negotiations. In addition, McNamara missed one of the April negotiations sessions because of a previously-scheduled vacation and Stanton again, at her request, replaced her. She had earlier advised the Association of her planned absence and they did not object because they wanted to keep bargaining. During the course of impact negotiations, she never delegated her authority to anyone but Stanton.

20. The findings of fact have been modified to clarify the status of O'Donnell and Ebb as representatives of "newco" and not the Employer.

> ...The MNA has always supported the merger, but has worked diligently to secure amendments that address the concerns of the University of Massachusetts Medical Center nurses regarding their benefits, pensions and employment status. The legislation as engrossed contains compromises which were crafted by the Senate Ways and Means Committee and the Senate leadership in response to these concerns. Our bargaining unit has accepted the resolution of these concerns as embodied in this legislation....We urge you to support the legislation as it is currently written....

The legislation, with amendments, was approved by the Legislature on November 25, 1997, Chapter 163 of the Acts of 1997 (Chapter 163) and became effective upon passage. Section 5(d) of Chapter 163 addressed seniority as follows:

> When an individual employed by a corporation relocates from one campus of a corporation to another campus of a corporation or from one corporation to another corporation, or when an individual employed by the university and contracted to a corporation becomes employed by a corporation and relocates as described above, in any such case the seniority and length of service of such employee shall be determined, for any purpose other than post employment benefits and, except when required by federal law, retirement plans, as if all service rendered at the campus or corporation from which the employee relocates had been rendered at the campus or corporation to which the employee is relocated. If the application of this section must be delayed for any reason with respect to employees in any class or category of employees, then this section shall not apply with respect to any other employees within the same class or category, wherever or however employed, during the period of such delay. For employees represented by an employee organization, seniority issues shall be : (1) as provided in collective bargaining agreements in effect as of the effective date of this act during the term of said agreements so long as such employees remain so employed and so represented, and (2) subject to negotiation as required by applicable law.

At the time of the hearing in the instant case, the Association was not aware if the seniority of any of its bargaining unit members had been changed[21] as a result of this legislative provision.

The Survey

In March 1997, Stanton was aware that Memorial Healthcare had hired Market Street Research, Inc. to solicit employees' views regarding the merger.[22]

On March 14, 1997, Kathleen Bailey (Bailey), a member of the Association's bargaining unit received the following E-mail communication from Carol Seaver (Seaver), her nurse manager:

> Umass and Memorial have asked a consulting firm to conduct focus groups as part of our intention to understand and address employee concerns about the merger. Market Street Research of Amherst will begin making their initial phone contacts tonight, March 11, based on a computer-randomized list of employees prepared by Human Resources. Meetings will be held off-campus next week.
>
> Please understand that these consultants are professionals in every way; the employee sample is confidential and all information collected will be strictly anonymous.
>
> These groups should give us a litmus test of the community's reactions; and your willingness to be open and forthcoming, if you're included in the sample, is significant to their success. Please let your colleagues and staff know that these calls and focus groups are being launched.

Bailey did not attend the meeting.

On the same date, Fox wrote to Chancellor Lazare objecting to the hiring of a consulting firm to conduct focus groups with the "intention" to understand and address employee concerns about the merger. Fox requested that the Employer cease and desist until negotiations were completed.

Also in March 1997, Judy Locke (Locke), a member of the Association's bargaining committee, received a call from a representative of a market research company who told her that they had been hired by UMass-Memorial to conduct a survey about the proposed merger.[23] He also informed her that a forum would be held at a downtown location and the participants would receive a fee of $50.

Locke attended the forum which was held about one week after the phone call. It lasted approximately two hours. There were about ten or twelve nurses from the Medical Center and Memorial Hospital in attendance. There were two facilitators present from the research company. One of the facilitators said that she was a representative of the marketing research company, hired by UMass-Memorial[24] solicit opinions from employees regarding the proposed merger. She said that the information provided would be confidential and individual statements would be taken in aggregate before the information was transmitted to UMass- Memorial.[25] Some of those attending spoke of their concern about consolidating services and losing jobs. Locke told the facilitator that she was offended that an exchange of views with management required paying an outside agency to ask questions and to pay participants a $50 fee. McNamara, the Employer's chief spokesperson for the impact negotiations, received the data, looked at it, and threw it away.[26]

OPINION

Duty to Provide Information

The Association alleges that the Employer has failed and refused to provide information relating to the proposed merger (SUP-4392) and relating to the accrued creditable service of bargaining unit

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21. The Association objected to the words "adversely affected" in the hearing officer's finding. We have substituted the word "changed" for the words "adversely affected" because it more accurately reflects Pinkham's testimony.

22. Although the Association challenged the omission of Stanton's testimony from the facts, the record does not support the Association's proposed fact that Stanton testified that the Employer and Memorial Hospital jointly decided to solicit the employees. We have modified the facts to add Stanton's testimony.

23. This finding has been modified to reflect that Locke was told that the market research company was hired by UMass-Memorial.

24. See footnote 22.

25. See footnote 22.

26. The Employer challenged the hearing officer's finding that McNamara "reviewed" the material rather than just "looked at" it. After reviewing the record, we have decided to modify this finding.

members (SUP-4400). We have held consistently that, if a public employer possesses 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 obligated to provide the information upon the union's request. *Boston School Committee,* 25 MLC 181, 186 (1999); *Higher Education Coordinating Council*, 23 MLC 266, 268 (1997). The union's right to receive relevant and reasonably necessary information is derived from the statutory obligation to engage in good faith collective bargaining including contract negotiations and contract administration. *Boston School Committee*, 25 MLC 181, 186 (1999); *Boston School Committee*, 24 MLC 8, 11 (1998), citing *Boston School Committee*, 10 MLC 1501, 1513 (1984). Information concerning terms and conditions of employment of employees represented by a union is presumptively relevant and necessary for the union to carry out its statutory duties in representing those employees. *Higher Education Coordinating Council*, 23 MLC at 268.

a) The Association's Request for the Merger Documents

The record reflects that during negotiations for a successor agreement, the Association learned of a possible merger between the Employer and Memorial Hospital on December 6, 1996. On that date, the Employer's chief negotiator confirmed to the Association that the Employer had had approximately ten conversations with Memorial Hospital about a merger.

On December 17, 1996, the Association made the following request:

> (a) Any documents regarding a corporate merger, consolidation, affiliation and/or a joint venture between University of Massachusetts Medical Center and Memorial Hospital.
>
> If you contend that no such documents exist, please provide a detailed explanation of the relationship between the hospitals, including but not limited to any current or planned cooperative undertakings by and between those organizations.
>
> (b) Any documents relating to plans for altering the operations of University of Massachusetts Medical Center arising from any possible changes in University of Massachusetts Medical Center's status described above, including but not limited to documents regarding any plans, if any, to eliminate any nursing units, layoff members of the bargaining unit, interchange personnel with the other hospitals, change the budgeting and funding sources for, operationally integrate the hospitals, integrate the management of the hospitals. If you contend that no such documents exist, please provide a detailed description and detailed explanation of University of Massachusetts Medical Center and/or its parent corporation's (if any) and/or its related organization's (if any) intentions or plans in any of the areas listed in the preceding sentence.
>
> (c) Any documents relating to current or planned future status of University of Massachusetts Medical Center and Memorial Hospital as sub-corporations of a parent corporation; if you claim that no such documents exist, please provide information in that regard.

On December 20, 1996, in response to the December 17 request, the Employer requested the Association to explain why it needed the information.

On December 27, 1996, Fox made an additional request for information concerning the possible sale, merger, consolidation, affiliation, and/or joint venture between the Employer and Athol Memorial Hospital, Berkshire Medical Center, Health Alliance, and/or Memorial Hospital in Worcester. The documents requested were the same as in Fox's December 17 letter.

In response to the Employer's December 20 letter, on January 23, 1997, the Association's attorney sent a letter to the Employer explaining the basis for the Association's request for information and reiterating the request as follows:

> (1) All documents relating to a merger by and between the Employer (and/or its Medical Center) and another Entity that affects the Medical Center, including but not limited to any merger agreements. If you contend that no such documents exist, please provide a detailed description of the relationship, if any, between the Employer (and/or its Medical Center) and another Entity, whether such relationship already exists or has not yet been established.
>
> (2) All documents relating to plans for altering the operation of the Medical Center arising from Mergers and/or relationships identified in paragraph one above, including all plans that have been consummated and plans that have not yet been consummated. This includes but is not limited to plans, if any, to eliminate nursing units, layoff members of the bargaining unit within the Medical Center, interchange personnel between the Medical Center and another Entity, change the budgeting or funding sources for the Medical Center, operationally integrate the Medical Center with another Entity, and integrate management of the Medical Center and another Entity. If you contend that no such documents exist, please provide a detailed description of the Employer and/or Medical Center's plans in the areas identified in the preceding sentence.
>
> (3) All documents relating to current or planned future status of the Employer and/or its Medical Center as sub-corporations of a parent corporation. If you claim that no such documents exist, please provide information in that regard.

On January 29, 1997, the Employer wrote to the Association's attorney seeking to ascertain whether the Association continued to be interested in obtaining the requested information because the Employer believed that the parties had reached a tentative agreement on January 23, 1997 that included a clause dealing with the issue of successorship and the relocation of nurses into and out of the bargaining unit.

On February 12, 1997, the Association's attorney wrote to the Employer indicating that it was still interested in obtaining the requested information because the information would be necessary for the Association to administer the successorship and relocation clauses of the successor collective bargaining agreement. However, the Association noted that there was, as yet, no completed successor agreement. Although certain individual items had been "signed-off", there were still issues left on the bargaining table. In addition, the Association clarified its information request by stating that it was seeking all proposed legislation regarding a merger and also added Hubbard Regional Hospital to its request. The parties reached a tentative agreement on February 14, 1997.

On February 27, 1997, the Employer responded to the Association's numerous requests for information as follows:

> With regard to your general request for documents pertaining to University "plans", the University does not believe it has any obligation pursuant to the terms of MGL c. 150E to provide information about matters being developed and/or not yet finalized. Such information, if it existed, might also involve attorney-client communications and confidential information involving core managerial discretion and decision-making, and again the University believes such information to be excluded from the terms of MGL c. 150E. Accordingly, the University does not believe it appropriate or necessary to provide documents in a developmental status concerning evolving matters. However, be assured that if and when a decision is made that impacts the MNA unit, the University would provide the MNA with the documents required by MGL c. 150E.
>
> Further responding to your request, enclosed please find the only affiliation agreements the Medical Center has, they include the following: Athol Memorial Hospital, Central New England Health Systems, Inc. (what you refer to as Health Alliance Inc.), Hubbord Hospital, Holyoke Hospital, Noble Hospital and Wing Memorial Hospital. As for Harrington Hospital, Heywood Hospital, Day Kimbal Hospital and Milford-Whitinsville Hospital, the University has already provided the MNA with copies of these agreements on or about May 23, 1996. Tri-River is a Medical Center operation. And finally, with regard to Berkshire Medical Center, Clinton Hospital, Marlboro Hospital and Shrewsbury Community Clinic, the Medical Center does provide certain physician services at these facilities.
>
> Regarding your request for merger documents, enclosed please find the following documents: the Definitive Agreement and relevant votes of the University's Board of Trustees. Minutes of the Board of Trustee votes will be made available to you once they have been officially approved and adopted by the Board.

The parties commenced impact bargaining on March 18, 1997. The Employer provided a copy of the proposed merger legislation on March 18 and explained the legislation line-by-line on March 19.

On March 24, 1997, the Association's attorney responded as follows to the Employer's February 27 letter:

> First, ...the University represents that it has supplied all documents responsive to the MNA's request for documents "relating to a merger" as specified in the first paragraph of the information request. Therefore, I am assuming that there are no other documents containing, showing, relating to, or referring in any/or all ways directly or indirectly to the subject of a merger. Please confirm whether this is correct. If there is further responsive documents and information, please provide same to me as soon as possible.
>
> Second, I also understand from your letter that the University is refusing to provide information about "plans for altering the operation of the Medical Center" to the extent that such information is either (a) "being developed and/or not yet finalized," or (b) "involves attorney-client communications and confidential information involving core managerial discretion and decision-making". I am unclear as to what you mean by this.
>
> As to the issue of "plans" "being developed" or "not yet finalized," do you mean that MNA is not entitled to information about "plans" to the extent that there have been discussions only as to possibilities, without any decision having been made as to whether actually to pursue a course of action? Do you contend that MNA is not entitled to information about "plans" to the extent that they have not yet been implemented, even though the University has decided to take a particular course of action? Does the University represent that it has made no decisions regarding any "plans" for operational changes from a merger as of this date?
>
> ...Finally, I am also requesting that you clarify your letter by responding to the following question: Assuming that the University has made "plans" for operational changes arising from a merger, for each such plan, please identify the general subject matter of the plan (e.g. layoffs, management reassignment, closure of nursing units), and provide a detailed explanation of the reasons why the University is failing to provide MNA with information about each such plan?

On March 31, 1997, the Employer reiterated its position reflected in its February 27 letter to the Association. Furthermore, the Employer stated that it anticipated that the on-going impact negotiations would adequately address issues raised by the possible merger with Memorial Hospital.

Our analysis here is guided by the decision of the U.S. Court of Appeals for the First Circuit in *Providence Hospital* v. *NLRB*, 93 F3d 1012 (1st Cir. 1996). There the Court addressed the issue of a union's right to information during the pendency of a potential merger. The Court determined that, as long as a merger is sufficiently advanced, a union is entitled to request information shown by the totality of circumstances to be relevant for it to prepare for impact bargaining. 93 F3d at 1019. The Court was particularly persuaded to uphold the NLRB's decision finding that the employer had unlawfully refused to provide the union with relevant and reasonably necessary information because of the protracted delay in responding to the union's request for information. 93 F3d at 1021. The facts demonstrated that the union's first of five requests was made in the summer of 1993 and the employer did not respond until late 1994, after the union had filed a charge with the NLRB. The Court found no evidence that the protracted delay between the requests and the divulgement of the data could not be attributed to the time needed to assemble the information furnished. 93 F3d at 1021.

Here, the Association made its first informational request on December 17, 1996, and on December 20, the Employer responded with its own request that the Association explain its need for the information. On January 23, 1997, the Association explained its request to the Employer. On January 29, 1997 the Employer inquired whether the Association was still interested in the requested documents because it believed that the parties had reached a tentative successor agreement and that the merger issues had been resolved. In response, the Association informed the Employer on February 12, 1997 that it still sought the information.

Two weeks later, on February 27, 1997, the Employer provided certain information and explained why it was not providing other information. The Employer provided the Association with the affiliation agreements and merger documents, including the merger agreement and the Board of Trustees votes. The Employer also told the Association that it would provide the Minutes of the Trustees votes as soon as the Minutes were officially approved and adopted by the Board. However, the Employer refused to provide plans because: 1) it did not believe that it was legally obligated to provide information about matters being developed and/or not yet finalized; and 2) if the information existed, it might also involve attorney-client communications and confidential information involving core managerial discretion and decision-making.

On March 18 and 19, 1997, the Employer provided a copy of its proposed legislation to the Association and explained it line-by-line. No further information regarding plans was provided to the Association.

We are not persuaded by the Employer's defense that it was not legally obligated to provide information about matters being developed or not yet finalized. Applying the standard set out in *Providence Hospital*, we must consider whether the Employer's merger plans were sufficiently advanced to trigger an obligation to provide the Association with the requested information. On December 6, 1996, the Employer told the Association that, as of that date, it had had approximately ten conversations with Memorial Hospital. Therefore, at the time the Association made its first request for information on December 17, 1996, the Employer's merger plans were more than mere speculation. Rather, they were sufficiently advanced to require it to provide the Association with the requested information. Even if some or all of the requested merger plans did not in fact exist at the time the Union requested them the Employer should have advised the Association that they did not exist rather than giving the Union a vaguely-worded response that was effectively unresponsive to the Union's information request.

The Employer argues that it is not required to disclose the requested information because it was concerned about the confidentiality of that information and attorney-client privilege. The employer has the burden of demonstrating that its concerns about disclosure of the information are legitimate and substantial. *Board of Trustees, University of* Massachusetts, 8 MLC 1139, 1144 (1981). Here, we find that the Employer has not satisfied that burden. If an employer has a good faith concern involving confidentiality, it is obligated to initiate a discussion to explore acceptable alternative ways to permit the union access to the necessary information. *City of Boston*, 22 MLC 1689, 1709 (1996), citing *Worcester School Committee*, 14 MLC 1682, 1684 (1988). Here, the Employer did not offer to discuss alternative ways for providing the Association with the information the Association sought in a manner that would meet the Association's needs. Further, the Employer did not identify or describe the documents it sought to have protected by the attorney-client privilege. Cf. *City of Boston*, 25 MLC 55, 57 (1998) (on appeal), citing *Johnson* v. *Rauland-Borg Corporation*, 961 F.Supp.208 (N.D. Ill.1997). Therefore, it has failed to demonstrate how those documents were shielded from disclosure by the attorney-client privilege.

b) The Association's Request for Accrued Creditable Service

We next turn to the Association's request for information about the accrued creditable service of its bargaining unit members. The Employer contends that it made reasonable efforts to provide the Association with information that it had in its possession and that it had no obligation to provide the Association with information that it did not possess, such as the creditable service bargaining unit members accrued at workplaces other than at UMass. We analyze this issue in two parts: 1) the Employer's obligation to provide information relating to creditable service accrued at Umass; and 2) the Employer's obligation to provide information relating to creditable service accrued at other workplaces than UMass.

First, we believe that the Employer made reasonable efforts to respond to the Association's request for information related to creditable service accrued at UMass. The Association made its first request in January 1997 and on March 17, 1997, the Employer sent a graph to the Association with a rough analysis of the age and service of bargaining unit members. At that time the Employer stated that it was working to verify the information for all bargaining unit members in the next several weeks. On April 17, April 23, and May 1, 1997, the Employer communicated with bargaining unit members in an attempt to verify their accrued creditable service. On June 6, the Association made another request for the information, and, on the same date, Deputy Chancellor Stanton wrote to the Association suggesting that they identify two or three individuals who could funnel requests for clarification or correction of the accrued creditable service information and then Fisk and the human resources staff could coordinate the responses to the bargaining unit. In her testimony, Fisk explained the difficulty of obtaining the correct information because all the research had to be done manually. From November 1997 through April 1998, the Employer hired temporary staff to deal just with the information request. Considering the difficulty in obtaining correct data and the continuing efforts of the Employer to do so, we find that the Employer made reasonable efforts to satisfy the Association's request and dismiss this portion of the Complaint.

Despite the Employer's efforts to provide information about creditable service accrued by Employees at UMass, the Association argues that the delay in providing that information violated the Law. A public employer may not unreasonably delay furnishing requested information it is obligated to provide. A delay is unreasonable if it diminishes a union's ability to fulfill its role as the exclusive representative. *Boston School Committee*, 25 MLC 181, 186 (1999), citing *Boston School Committee*, 24 MLC 8, 11 (1997); *Massachusetts State Lottery Commission*, 22 MLC 1468, 1472 (1996); *City of Boston*, 8 MLC 1419, 1437-1438 (1981). Although it took almost a year for the Employer to provide the Association with comprehensive information about creditable service at Umass, this delay was attributable to the extensive nature of the request and the difficulty in calculating that information from underlying records. The Employer made extensive efforts to gather that information, including hiring temporary help to review the Employer's records. Therefore, in light of the nature of this particular information request and the difficulty in gathering that information, we do not find that the delay here was unreasonable.

Second, we find that that data regarding accrued creditable service pertaining to employment outside of UMass was not in the possession of the Employer, and, therefore, the Employer was not obligated to provide this information to the Association. An employer does not violate the Law by failing to provide information that it does not possess. *Board of Regents*, 19 MLC 1248, 1271 (1992), and the record does not demonstrate that the Employer maintained records about its employee's creditable service when working for other employers. Accordingly, we dismiss this portion of the Complaint of Prohibited Practice.

Impact Bargaining

Section 6 of the Law requires public employers and unions to meet at reasonable times to negotiate in good faith over wages, hours, standards of productivity and performance, and any other terms and conditions of employment *Boston School Committee*, 25 MLC 181, 187 (1999). It is well-settled that public employers are obligated to bargain with unions over the impacts of a managerial decision if it affects employee's wages, hours, and other terms and conditions of employment. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557 (1983). The duty to bargain requires the parties to enter into negotiations with an open mind and a sincere desire to reach an agreement and to make efforts to compromise differences. *Boston School Committee*, 25 MLC at 187, citing *Commonwealth of Massachusetts*, 8 MLC 1499, 1510 (1981); *Brockton School Committee*, 23 MLC 43 (1996), citing *Holbrook Education Association*, 14 MLC 1737, 1740 (1988).

The Commission will determine that the parties have reached impasse in negotiations if both parties have negotiated in good faith on bargainable issues to the point that further negotiations would be fruitless because the parties are deadlocked. *Commonwealth of Massachusetts*, 25 MLC 201, 205 (1999); *Town of Brookline*, 20 MLC 1570, 1594 (1994). An analysis of whether the parties are at impasse requires an assessment of the likelihood of further movement by either side and whether they have exhausted all possibility of compromise. *Commonwealth of Massachusetts*, 25 MLC at 205; *Woods Hole, Martha's Vineyard and Nantucket Steamship Authority*, 14 MLC 1518, 1529-30 (1988). To determine whether impasse has been reached, the Commission considers the following factors: bargaining history, the good faith of the parties, the length of the negotiations, the importance of the issues to which there is a disagreement, and the contemporaneous understanding of the parties concerning the state of the negotiations. *Town of Hudson*, 25 MLC at 147, citing *Town of Weymouth*, 23 MLC 70, 71 (1996).

In the instant case, the Association argues that the Employer did not bargain to resolution or impasse prior to filing the merger legislation. The merger legislation included issues that affected the terms and conditions of employment of the Association's bargaining unit members. It is undisputed that negotiations over the impact of those negotiations commenced on March 18, 1997 and that the Employer filed the merger legislation on April 14, 1997. It is also undisputed that the Association protested the Employer's filing the legislation prior to completing negotiations with the Association. When one party to the negotiations indicates a desire to continue bargaining, this demonstrates that the parties have not exhausted all possibilities of compromise, and precludes a finding of impasse. *Commonwealth of Massachusetts*, 25 MLC at 205. Further, even though the parties here held eight lengthy negotiation sessions, there were still important issues left to negotiate.

The Commission does not sanction a short time period for bargaining that might produce meaningful bargaining. *Town of Hudson*, 25 MLC at 148; *Holyoke School Committee*, 12 MLC 1443, 1452, n.10 (1985). Further, an employer who notifies a union that an action will take effect on a certain date must justify a deadline for completing negotiations, with a compelling, objective reason. *Town of Hudson*, 25 MLC at 148; *New Bedford School Committee*, 8 MLC 1472, 1478 (1981). On March 19, 1997, the Employer told the Association, without specifying, that there were a variety a reasons why the Employer needed to move the legislation. On that date, the Employer offered the Association a two-week limit on negotiations prior to filing - a suggestion the Association rejected. The Employer failed to justify why the merger legislation had to be filed in April 1997. Under these circumstances, we find that the parties had not reached impasse because the Employer arbitrarily shortened the period for bargaining, the Association expressed interest in continuing to bargain, and further bargaining would not have been fruitless. Therefore, we find that the Employer violated the Law when it terminated bargaining prior to reaching resolution or impasse over the terms and conditions of employment contained in the proposed merger legislation.

Repudiation of Contractual Seniority Provision

An employer that fails to implement an unambiguous agreement repudiates the agreement's terms in violation of the obligation to bargain in good faith. *Boston School Committee*, 22 MLC 1365, 1375 (1996); *City of Melrose*, 22 MLC 1209, 1217 (1995). To establish a violation of the Law, a union must show that the employer deliberately refused to abide by an agreement. *Duxbury School Committee*, 25 MLC 22, 24 (1998); *South Shore Regional School District Committee*, 22 MLC 1414, 1425 (1995); *City of Quincy*, 17 MLC 1603 (1991).

The retention-of-collective-bargaining-rights language contained both in the Employer's proposed merger legislation provided to the Association and in the bill it filed in the Legislature negates any allegation that the Employer repudiated or attempted to repudiate the seniority provision of the parties' collective bargaining agreement. Furthermore, the language contained in the enacted legislation requires that the Employer apply the terms of the collective bargaining agreement on seniority issues. The Employer did not repudiate the seniority language in the parties' agreement. Therefore, we dismiss this portion of the Complaint of Prohibited Practice.

Negotiations Spokespersons

Although a party's designated bargaining representative need not have the authority to conclude a binding agreement, the representative must posses sufficient authority to make commitments on substantive provisions of a proposed agreement. *Boston School Committee*, 25 MLC 181, 187 (1999), citing *Watertown School Committee*, 9 MLC 1301, 1304 (1982). The record here demonstrates that McNamara was the chief spokesperson for the Employer. In her absence, she delegated Deputy Chancellor Stanton to be the chief spokesperson. The allegation that the Employer appointed Attorneys O'Donnell and Ebb as the chief spokespersons without notice to the Association is not supported by the record. When O'Donnell and Ebb were present during negotiations, they were identified as representatives of the new entity, not the Employer. Therefore, we find that McNamara and Stanton continued to have authority to negotiate with the Association, and we dismiss this portion of the Complaint of Prohibited Practice.

Bypassing the Association and Dealing Directly with Employees

It is well established that the duty to bargain collectively with the employee's exclusive collective bargaining representative prohibits the employer from dealing directly with employees in the bargaining unit on matters that are properly the subject of negotiations with the bargaining unit's exclusive representative. *Millis School Committee*, 23 MLC 99, 100 (1996), citing *Blue Hills Regional School Committee*, 3 MLC 1613 (1977). See, also, *City of Springfield*, 17 MLC 1380, 1385 (1990); *Town of Randolph*, 8 MLC 2044, 2052 (1982). An employer's direct dealing with the employees in the bargaining unit undermines the effectiveness of the bargaining representative, and creates the possibility of conflict between individually negotiated gains and the terms of the contract. *Millis School Committee,* 23 MLC at 100, citing *Lawrence School Committee*, 3 MLC 1304, 1312 (1976).

The Association argues that the Employer engaged in direct dealing by hiring a resource company to survey employees represented by the Association about conditions of employment. However, we find insufficient evidence to conclude that the Employer (UMass) hired the research company to survey the Association's bargaining unit members. Deputy Chancellor Stanton testified that it was Memorial Healthcare that initiated the survey. Locke, a member of the Association's bargaining committee, was told by a representative from the market research company that it was UMass-Memorial (the new entity is called UMass Memorial Health Care, Inc.). However, Bailey, a bargaining unit member, received an E-mail from her supervisor that said that "Umass *and* Memorial have asked a consulting firm to conduct focus groups as part of our intention to understand and address employee concerns about the merger...". Of the three witnesses, only Deputy Chancellor Stanton testified from first-hand knowledge. Because of the conflicting evidence on the issue of who hired the survey company, we are unable to conclude that it was the Employer, rather than another entity, that initiated the survey. Accordingly, we dismiss this portion of the Complaint of Prohibited Practice.

ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Trustees of the University of Massachusetts, Medical Center 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 information regarding merger plans.

   b. Failing and refusing to bargain with the Association over the impacts of its merger decision.

   c. 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 request, provide the Association with information regarding its merger plans.

   b. Upon request, bargain in good faith with the Association over the impacts of its merger decision.

   c. 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.

   d. Notify the Commission within thirty (30) days after the date of service of this decision and order of the steps taken to comply with its terms.

SO ORDERED.

NOTICE TO EMPLOYEES

The Labor Relations Commission has determined that the Trustees of the University of Massachusetts, Medical Center has violated Sections 10(a) (5) and (1) by failing to provide the Massachusetts Nurses Association with certain information which is necessary and relevant to the Association and by failing to bargain to resolution or impasse over the impacts of its merger decision with the Association.

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, specifically information regarding merger plans.

WE WILL NOT fail and refuse to bargain with the Association over the impacts of our merger decision.

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 information regarding merger plans.

WE WILL, upon request by the Association, bargain in good faith with the Association over the impacts of our merger decision.

[signed]
University of Massachusetts, Medical Center

* * * * * *